

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
November 17, 2020**

REVISED*
*11/16/20

AGENDA

- 2:00 **Postponed** Presentations
- 2:00 Presentation by Kate Hanley, Secretary of the Electoral Board, Regarding Election Year 2020
- 2:00 Board Appointments to Citizen Boards, Authorities, Commissions, and Advisory Groups
- 2:00 Matters Presented by Board Members
- 2:00 Items Presented by the County Executive

**ADMINISTRATIVE
ITEMS**

- 1 Streets into the Secondary System (Mason and Dranesville Districts)
- 2 Reinstatement of Plans Examiner Status Under the Expedited Land Development Review Program
- 3 Authorization to Advertise a Public Hearing on the FY 2021 Mid-Year Review to Amend the Current Appropriation Level in the FY 2021 Revised Budget Plan
- 4 Authorization for the Fairfax County Police Department to Apply for and Accept Grant Funding from the U.S. Department of Justice, Office of Justice Programs, Edward Byrne Memorial Justice Assistance Grant
- 5 Authorization for the Department of Neighborhood and Community Services to Apply for and Accept Grant Funding from the Virginia Department of Education Child and Adult Care Food Program and Summer Food Service Program
- 6 Approval of a "Watch for Children" Sign as Part of the Residential Traffic Administration Program (Hunter Mill District)
- 7 Authorization to Advertise a Public Hearing on Proposed Amendments to Chapter 61 (Building Provisions) of *The Code of the County of Fairfax, Virginia* (County Code) Regarding Penalties

ACTION ITEMS

- 1 Approval of Revisions to Procedural Memorandum No. 11-01, Exempt Service

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
November 17, 2020**

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**ACTION ITEMS
(continued)**

- 2 Approval of Revisions to Chapters 4 and 10 of the Personnel Regulations to Temporarily Increase the Number of Hours of Compensatory Time That Can Be Carried Over at the End of 2020 and 2021, and to Clarify When the 12-Month Period Commences for the Use of Paid Family Leave for Birth and Adoption/Foster Care Placements
- 3 Authorization to Use Economic Opportunity Reserve for Local Match of a Governor's Agriculture and Forestry Industries Development Fund Facility Grant (Hunter Mill District)
- 4 Approval of Memorandum of Understanding Between the Fairfax County Board of Supervisors and the Fairfax County Redevelopment and Housing Authority Regarding Implementation of the County's MS4 Program on FCRHA-Owned Property
- 5 Authorization to Enter into an Interim Agreement with Alpine-X LLC for Fairfax Peak Development at I-95 Lorton Landfill (Mount Vernon District)
- 6 Designation of the Little River Glen and Autumn Willow Senior Housing Sites as Revitalization Areas (Braddock and Springfield Districts)

**PUBLIC
HEARINGS**

- 3:00 Public Hearing to Receive Comment from Citizens on the Proposed Legislative Program to be Presented to the 2021 Virginia General Assembly
- 3:00 Public Hearing to Consider Adoption of an Uncodified Ordinance to Provide a Method to Assure Continuity in Fairfax County Government During the COVID-19 Emergency, as Authorized by Virginia Code § 15.2-1413, by Approving Temporary County-Operated Hypothermia Prevention Shelters and Authorizing a Streamlined Process for Approving Temporary Use Modifications in Response to the Emergency, and to Repeal the Emergency Uncodified Ordinance on the Same Subject, Which Was Adopted on October 6, 2020, and Is Hereby Replaced by This Ordinance
- 3:00 Decision Only on RZ 2019-HM-011 (Sakthivel Chinnasamy and Nandakumar Sreenivasan) (Hunter Mill District)

**FAIRFAX COUNTY
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**PUBLIC
HEARINGS
(continued)**

- 3:00 Public Hearing on SE 2019-MA-014 (Lora L. Seeds) (Mason District)
- 3:00 Public Hearing on SEA 2018-MA-008 (Trustees of Lincolnia United Methodist Church and Luca's Rainbow Bilingual Preschool LLC) (Mason District)
- 3:30 Public Hearing on RZ 2019-SP-014 and PCA/CDPA 2017-SP-017 (Brightview Senior Living Development, LLC) (Springfield District)
- 3:30 Public Hearing on RZ 2020-SU-006 (Cape Theresa, LLC) (Sully District)
- 3:30 Public Hearing on PCA 86-W-001-13/CDPA 86-W-001-04 and PCA 87-S-039-07/CDPA 87-S-039-02 (Board of Supervisors of Fairfax County) (Braddock District)
- 3:30 Public Hearing on PCA 78-S-063-08 and RZ 2019-SU-005 (Stanley Martin Companies, LLC) (Sully District)
- 4:00 Public Hearing on Proposed Plan Amendment 2019-III-FC1, Fair Oaks Mall, Located Northwest of the Interstate 66 and U.S. Route 50 Interchange (Springfield District)
- 4:00 Public Hearing on a Proposed Amendment to Chapter 104 (Erosion and Sedimentation Control) of *The Code of the County of Fairfax, Virginia* (County Code) Re: Enforcement
- 4:00 Closed Session

POSTPONED*

*11/16/20



Fairfax County, Virginia
BOARD OF SUPERVISORS
AGENDA

Tuesday
November 17, 2020

2:00 p.m.

PRESENTATIONS

- RESOLUTION — To recognize the American Youth String Ensemble of the American Youth Philharmonic Orchestra for winning first prize in its sector at the American String Teachers Festival in Orlando, Florida. Requested by Chairman McKay.
- PROCLAMATION — To designate November 2020 as Caregivers Awareness Month. Requested by Supervisor Herrity.

STAFF:

Tony Castrilli, Director, Office of Public Affairs
Bill Miller, Office of Public Affairs

Board Agenda Item
November 17, 2020

2:00 p.m.

Presentation by Kate Hanley, Secretary of the Electoral Board, Regarding Election Year 2020

ENCLOSED DOCUMENTS:

None.

PRESENTED BY:

Kate Hanley, Secretary, Electoral Board

Board Agenda Item
November 17, 2020

2:00 p.m.

Board Appointments to Citizen Boards, Authorities, Commissions, and Advisory Groups

ENCLOSED DOCUMENTS:

Attachment 1: Appointments to be heard November 17, 2020

STAFF:

Jill G. Cooper, Clerk for the Board of Supervisors

November 17, 2020

NOTE: A revised list will be distributed immediately prior to the Board meeting.

**APPOINTMENTS TO BE HEARD NOVEMBER 17, 2020
(ENCOMPASSING VACANCIES PROJECTED THROUGH **DECEMBER 31, 2020**)
(Unless otherwise noted, members are eligible for reappointment)**

**A. HEATH ONTHANK MEMORIAL
AWARD SELECTION COMMITTEE (1 year)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Joseph W. Blackwell (Appointed 1/06-1/08 by Kauffman; 1/09- 1/19 by McKay) Term exp. 1/20	Lee District Representative		Lusk	Lee

ADVISORY SOCIAL SERVICES BOARD (4 years – limited to 2 full consecutive terms)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Storme Gray; appointed 3/19 by Storck) Term exp. 9/20 <i>Resigned</i>	Mount Vernon District Representative		Storck	Mount Vernon

AFFORDABLE DWELLING UNIT ADVISORY BOARD (4 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Mark Drake (Appointed 2/09-5/12 by McKay) Term exp. 5/16	Engineer/Architect/ Planner #2 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by James Francis Carey; appointed 2/95-5/02 by Hanley; 5/06 by Connolly) Term exp. 5/10 <i>Resigned</i>	Lending Institution Representative		By Any Supervisor	At-Large

AIRPORTS ADVISORY COMMITTEE (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Andrew Martin Concannon; appointed 9/15-1/17 by Gross) Term exp. 1/20 <i>Resigned</i>	Mason District Representative		Gross	Mason

**ALCOHOL SAFETY ACTION PROGRAM LOCAL
POLICY BOARD (ASAP) (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Frieda A. Tatem; appointed 10/93-10/96 by Davis; 9/99-10/02 by Hanley; 10/05-10/08 by Connolly; 11/11-10/17 by Bulova) Term exp. 10/20 Deceased	At-Large #1 Representative		By Any Supervisor	At-Large
Richard O. Bolger (Appointed 4/14-11/17 by Bulova) Term exp. 10/22	At-Large #5 Representative		By Any Supervisor	At-Large

ATHLETIC COUNCIL (2 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Terry Adams; appointed 11/11-7/13 by Gross) Term exp. 6/15 Resigned	Mason District Alternate Representative		Gross	Mason
Clarke Gray (Appointed 1/08-10/18 by Smyth) Term exp. 9/20	Providence District Alternate Representative		Palchik	Providence

BARBARA VARON VOLUNTEER AWARD SELECTION COMMITTEE (1 year)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Barbara Glakas (Appointed 1/12-6/19 by Foust) Term exp. 6/20	Dranesville District Representative		Foust	Dranesville
VACANT (Formerly held by Judith Fogel; appointed 6/12-5/15 by Gross) Term exp. 6/16 <i>Resigned</i>	Mason District Representative		Gross	Mason

BOARD OF BUILDING AND FIRE PREVENTION CODE APPEALS (4 years)
(No official, technical assistant, inspector or other employee of the DPWES, DPZ, or FR shall serve as a member of the board.)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Thomas J. Schroeder; appointed 06/92-2/17 by Bulova) Term exp. 2/21 <i>Resigned</i>	Design Professional #1 Representative		By Any Supervisor	At-Large

**BOARD OF EQUALIZATION OF REAL ESTATE ASSESSMENTS (BOE)
(2 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Asim Elfaki (Appointed 5/18-12/18 by Bulova) Term exp. 12/20	At-Large #1 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Joseph W. Blackwell, appointed 2/05-1/08 by Kauffman; 12/09-12/17 by McKay) Term exp. 12/20 <i>Resigned</i>	At-Large #2 Representative		By Any Supervisor	At-Large
Arthur S. Nachman (Appointed 6/14-11/18 by Foust) Term exp. 12/20	Professional #2 Representative	Arthur S. Nachman (Foust)	By Any Supervisor	At-Large
Noelle Maynard Holmes (Appointed 5/06-12/08 by Connolly; 12/10-12/18 by L. Smyth) Term exp. 12/20	Professional #4 Representative		By Any Supervisor	At-Large
M. Yvonne Demory (Appointed 1/07-12/18 by Hudgins) Term exp. 12/18	Professional #5 Representative	M. Yvonne Demory (Alcorn)	By Any Supervisor	At-Large
Sandy Pompelli (Appointed 1/15-11/18 by Bulova) Term exp. 12/20	Professional #6 Representative		By Any Supervisor	At-Large

CELEBRATE FAIRFAX, INC. BOARD OF DIRECTORS
(2 years – limited to 3 consecutive terms)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Karen Pica (Appointed 10/14-9/18 by McKay) Term exp. 9/20 <i>Not eligible for reappointment</i>	At-Large #1 Representative		By Any Supervisor	At-Large
Joan Marie Dec (Appointed 10/18 by Smith) Term exp. 9/20	At-Large #2 Representative		By Any Supervisor	At-Large

CHESAPEAKE BAY PRESERVATION ORDINANCE
EXCEPTION REVIEW COMMITTEE (4 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Grant Sitta; appointed 9/10-9/15 by Gross) Term exp. 9/19 <i>Resigned</i>	Mason District Representative		Gross	Mason

CITIZEN CORPS COUNCIL, FAIRFAX COUNTY (2 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by William J. McKenna; appointed 6/16-5/18 by Foust) Term exp. 5/20 <i>Resigned</i>	Dranesville District Representative		Foust	Dranesville

CIVIL SERVICE COMMISSION (2 years)

[NOTE: The Commission shall include at least 3 members who are male, 3 members who are female, and 3 members who are from a member of a minority group.]

Current Membership: Males: 7 Females: 3 Minorities: 4

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Deborah A. Woolen (Appointed 7/19 by McKay) Term exp. 12/20	At-Large #2 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Lee Ellen Helfrich; appointed 2/14-1/20 by Gross) Term exp. 12/21 <i>Resigned</i>	At-Large #9 Representative		By Any Supervisor	At-Large

COMMISSION FOR WOMEN (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Phylcia L. Woods (Appointed 1/20 by Palchik) Term exp. 10/20	Providence District Representative		Palchik	Providence
VACANT (Formerly held by Barbara Lippa; appointed 10/13 by Frey; 10/16 by Smith) Term exp. 10/19 <i>Deceased</i>	Sully District Representative	Dena Bashri	Smith	Sully

COMMISSION ON AGING (2 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Kathleen Hoyt (Appointed 12/16- 5/18 by Gross) Term exp. 5/20	Mason District Representative		Gross	Mason

CONSUMER PROTECTION COMMISSION (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Dirck A. Hargraves (Appointed 2/06 by Kauffman; 10/08- 7/17 by McKay) Term exp. 7/20	Fairfax County Resident #5 Representative		By Any Supervisor	At-Large

**DULLES RAIL TRANSPORTATION IMPROVEMENT DISTRICT
ADVISORY BOARD, PHASE I - (4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
James D. Policaro (Appointed 3/10-3/16 by Smyth) Term exp. 3/20	At-Large Representative #1		By Any Supervisor	At-Large
Peter M. Rosen (Appointed 3/04-3/16 by Smyth) Term exp. 3/20	At-Large #2 Representative		By Any Supervisor	At-Large
Jeffrey L. Kovach (Appointed 6/12-3/16 by Smyth) Term exp. 3/20	At-Large #3 Representative		By Any Supervisor	At-Large

**DULLES RAIL TRANSPORTATION IMPROVEMENT
DISTRICT ADVISORY BOARD, PHASE II (4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Gregory W. Trimmer (Appointed 1/12-1/16 by Bulova) Term exp. 1/20	BOS At-Large #6 Representative		By Any Supervisor	At-Large

ECONOMIC ADVISORY COMMISSION (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Sharon O. Steele (Appointed 2/18 by Bulova) Term exp. 12/20	At-Large Chairman's #1 Representative		McKay	At-Large Chairman's
Denton Urban Kent (Appointed 2/09-1/18 by Bulova) Term exp. 12/20	At-Large Chairman's #2 Representative		McKay	At-Large Chairman's
Mohammad Siddique Sheikh (Appointed 3/09-1/18 by Bulova) Term exp. 12/20	At-Large Chairman's #3 Representative		McKay	At-Large Chairman's
Janice D. Brangman (Appointed 6/19 by Bulova) Term exp. 12/20	At-Large Chairman's #4 Land Use Representative		McKay	At-Large Chairman's
Paul A Gilbert (Appointed 3/19 by Bulova) Term exp. 12/20	At-Large #11 Representative		By Any Supervisor	At-Large
John McGranahan (Appointed 2/18 by Bulova) Term exp. 12/20	At-Large #12 Representative		By Any Supervisor	At-Large

continued

ECONOMIC ADVISORY COMMISSION (3 years)

continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Taylor Chess Appointed 1/12-1/18 by Cook) Term exp. 12/20	Braddock District Representative		Walkinshaw	Braddock
Todd R. House Appointed 1/18 by Foust) Term exp. 12/20	Dranesville District Representative	Todd R. House	Foust	Dranesville
Michael T. Gwinn Appointed 9/19 by Hudgins) Term exp. 12/20	Hunter Mill District Representative		Alcorn	Hunter Mill
Alfred Thieme Appointed 1/09-12/17 by Gross) Term exp. 12/20	Mason District Representative		Gross	Mason
Stephen Keat Appointed 9/12-11/14 by Hyland; 12/17 by Storck) Term exp. 12/20	Mount Vernon District Representative		Storck	Mount Vernon
Brian Schoeneman (Appointed 12/11- 12/17 by Herrity) Term exp. 12/20	Springfield District Representative	Brian Schoeneman	Herrity	Springfield

ENGINEERING STANDARDS REVIEW COMMITTEE (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Maya Huber; appointed 12/09-1/14 by Confirmation; 05/18 by Bulova) Term exp. 3/21 <i>Resigned</i>	Citizen #4 Representative		By Any Supervisor	At-Large

FAIRFAX AREA DISABILITY SERVICES BOARD**(3 years- limited to 2 full consecutive terms per MOU, after initial term)**

[NOTE: Persons may be reappointed after being off for 3 years. State Code requires that membership in the local disabilities board include at least 30 percent representation by individuals with physical, visual or hearing disabilities or their family members. For this 15-member board, the minimum number of representation would be 5.

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Andrew Magill (Appointed 2/19 by Bulova) Term exp. 11/20	At-Large #2 Business Community Representative		By Any Supervisor	At-Large
Deborah C. Cohen (Appointed 1/20 by Walkinshaw) Term exp. 11/20	Braddock District Representative		Walkinshaw	Braddock
Michele Hymer Blitz (Appointed 6/06-3/16 by Hudgins) Term exp. 11/18 <i>Not eligible for reappointment</i>	Hunter Mill District Representative		Alcorn	Hunter Mill
Ayman Eldarwish (Appointed 10/17 by Gross) Term exp. 11/20	Mason District Representative		Gross	Mason
Kelley Brooks Simoneaux (Appointed 3/19 by L. Smyth; 1/20 by Palchik) Term exp. 11/22	Providence District Representative		Palchik	Providence

HEALTH CARE ADVISORY BOARD (4 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Michael Christ Trahos (Appointed 7/12-5/16 by Bulova) Term exp. 6/20	At-Large Chairman's Representative		McKay	At-Large Chairman's

HEALTH SYSTEMS AGENCY BOARD
(3 years - limited to 2 full terms, may be reappointed after 1-year lapse)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Jacqueline Hixson (Appointed 6/17 by Hudgins) Term exp. 6/20	Consumer #2 Representative		By Any Supervisor	At-Large

HISTORY COMMISSION (3 years)

[NOTE: The Commission shall include at least one member who is a resident from each supervisor district.] Current Membership:

Braddock - 3	Lee - 2	Providence - 1
Dranesville - 2	Mason - 1	Springfield - 2
Hunter Mill - 3	Mount Vernon - 3	Sully - 2

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Gretchen Bulova (Appointed 10/06- 12/17 by Bulova) Term exp. 12/20	At-Large #4 Representative		By Any Supervisor	At-Large
Steve Sherman (Appointed 10/09- 12/17 by McKay) Term exp. 12/20	Citizen #4 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Naomi D. Zeavin; appointed 1/95 by Trapnell; 1/96-11/13 by Gross) Term exp. 12/16 <i>Mason District Resigned</i>	Historian #1 Representative		By Any Supervisor	At-Large
Gregory P. Wilson (Appointed 5/19 by Foust) Term exp. 12/20	Historian #3 Representative		By Any Supervisor	At-Large

HUMAN RIGHTS COMMISSION (3 years)
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<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Kimberley Alton; appointed 3/19 by McKay) Term exp. 9/19 <i>Resigned</i>	At-Large #7 Representative		By Any Supervisor	At-Large

HUMAN SERVICES COUNCIL (4 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Ito Ibiam; appointed 1/18- 7/18 by Hudgins) Term exp. 7/22 <i>Resigned</i>	Hunter Mill District #1 Representative		Alcorn	Hunter Mill
Kimberly Adams (Appointed 6/16 by Herrity) Term exp. 11/20	Springfield District #2 Representative	Steven Lam	Herrity	Springfield

INDUSTRIAL DEVELOPMENT AUTHORITY (4 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Charles Watson; appointed 3/05-10/16 by Smith) Term exp. 10/20	At-Large #7 Representative		By Any Supervisor	At-Large

INFORMATION TECHNOLOGY POLICY ADVISORY COMMITTEE (ITPAC)
(3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Steven Lam (Appointed 5/09-12/17 by Cook) Term exp. 12/12/20	Braddock District Representative		Walkinshaw	Braddock
Susan S. Hoffman (Appointed 2/97-12/17 by Gross) Term exp. 12/20	Mason District Representative	Susan S. Hoffman	Gross	Mason
Edward Blum (Appointed 2/97-9/01 by Connolly; 1/04-12/17 by L. Smyth) Term exp. 12/20	Providence District Representative		L. Smyth	Providence
John M. Yeatman (Appointed 1/02-1/04 by McConnell; 6/15 by Herrity) Term exp. 12/17	Springfield District Representative	Sean Rastatter	Herrity	Springfield

OVERSIGHT COMMITTEE ON DISTRACTED AND IMPAIRED DRIVING (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Annette Koklauner (Appointed 1/16 by Bulova) Term exp. 6/19	At-Large Chairman's Representative		McKay	At-Large Chairman's

OVERSIGHT COMMITTEE ON DISTRACTED AND IMPAIRED DRIVING (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by William Uehling; appointed 3/10-7/12 by Bulova) Term exp. 6/15 <i>Resigned</i>	Braddock District Representative		Walkinshaw	Braddock
VACANT (Formerly held by Amy K. Reif; appointed 8/09-6/12 by Foust) Term exp. 6/15 Resigned	Dranesville District Representative		Foust	Dranesville
Nabil S. Barbari (Appointed 1/07-9/16 by Gross) Term exp. 6/19	Mason District Representative		Gross	Mason
VACANT (Formerly held by Jeffrey Levy; appointed 7/02-6/13 by Hyland) Term exp. 6/16 Resigned	Mount Vernon District Representative		Storck	Mount Vernon
VACANT (Formerly held by Tina Montgomery; appointed 9/10-6/11 by L. Smyth) Term exp. 6/14 <i>Resigned</i>	Providence District Representative		Palchik	Providence
Peyton Smith (Appointed 10/17 by Smith) Term exp. 6/20	Sully District Representative		Smith	Sully

PARK AUTHORITY (4 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Faisal Khan (Appointed 2/13-1/17 by Bulova) Term exp. 12/20	At-Large Chairman's Representative		McKay	At-Large Chairman's
Timothy B. Hackman (Appointed 6/16-12/16 by Foust) Term exp. 12/20	Dranesville District Representative	Timothy B. Hackman	Foust	Dranesville
William G. Bouie (Appointed 2/05-01/17 by Hudgins) Term exp. 12/20	Hunter Mill District Representative	William G. Bouie (Alcorn)	Alcorn	Hunter Mill
Ken A. Quincy (Appointed 2/07-1/17 by L. Smyth) Term exp. 12/20	Providence District Representative		Palchik	Providence

<u>PLANNING COMMISSION (4 years)</u>

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Candice Bennett (Appointed 1/20 by McKay) Term exp. 12/20	At-Large #1 Chairman's Representative		McKay	At-Large Chairman's
John Ulfelder (Appointed 12/13- 12/16 by Foust) Term exp. 12/20	Dranesville District Representative	John Ulfelder	Foust	Dranesville
Phillip A. Niedzielski-Eichner (Appointed 12/16 by L. Smyth) Term exp. 12/20	Providence District Representative		Palchik	Providence

REDEVELOPMENT AND HOUSING AUTHORITY (4 years)
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<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Ezra Rosser (Appointed 9/18 by Bulova) Term exp. 4/20	At-Large #1 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Sharisse Yerby; appointed 11/17 by Bulova) Term exp. 4/21 <i>Resigned</i>	At-Large #2 Representative		By Any Supervisor	At-Large
Albert J. McAloon (Appointed 7/95 by Alexander; 3/96-3/00 by Kauffman; 4/04- 4/16 by McKay) Term exp. 4/20	Lee District Representative		Lusk	Lee
VACANT (Formerly held by Robert Schwaninger; appointed 7/06-3/18 by Gross) Term exp. 4/22 <i>Resigned</i>	Mason District Representative		Gross	Mason

RESTON TRANSPORTATION SERVICE DISTRICT ADVISORY BOARD

The Board of Supervisors established the advisory board on April 4, 2017
There will be 14 members on this advisory board. The appointees would serve
for 4-year terms from April 4, 2017

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
NEW POSITION	Residential Owners and HOA/Civic Association #1 Representative		Foust or Alcorn	At-Large
NEW POSITION	Residential Owners and HOA/Civic Association #2 Representative		Foust or Alcorn	At-Large
NEW POSITION	Residential Owners and HOA/Civic Association #3 Representative		Foust or Alcorn	At-Large

ROAD VIEWERS BOARD (1 year)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Joseph Bunnell; appointed 9/05-12/06 by McConnell; 2/08- 11/13 by Herrity) Term exp. 12/14 <i>Resigned</i>	At-Large #1 Representative		By Any Supervisor	At-Large
Paul Davis (Appointed 3/17-11/18 by Bulova; 1/20 by McKay) Term exp. 12/20	At-Large #2 Representative		By Any Supervisor	At-Large
Marcus Wadsworth (Appointed 6/09-1/20 by McKay) Term exp. 12/20	At-Large #3 Representative		By Any Supervisor	At-Large

Continued

ROAD VIEWERS BOARD (1 year)

continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Stephen E. Still; appointed 6/06-12/11 by L. Smyth) Term exp. 12/12 <i>Resigned</i>	At-Large #4 Representative		By Any Supervisor	At-Large
Micah D. Himmel (Appointed 12/11-1/18 by L. Smyth) Term exp. 12/18	At-Large #5 Representative		By Any Supervisor	At-Large

SMALL BUSINESS COMMISSION, FAIRFAX COUNTY (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Shalonda Scott-Boyd (Appointed 5/19 by Bulova) Term exp. 12/20	At-Large #2 Representative		By Any Supervisor	At-Large
Joseph Patrick Underwood (Appointed 12/17 by Cook) Term exp. 12/20	Braddock District Representative		Walkinshaw	Braddock
Malachi B. Jones (Appointed 1/18 by Foust) Term exp. 12/20	Dranesville District Representative		Foust	Dranesville
Gwyn Whittaker (Appointed 6/19 by Hudgins) Term exp. 12/20	Hunter Mill District Representative	Gwyn Whittaker	Alcorn	Hunter Mill

Continued

SMALL BUSINESS COMMISSION, FAIRFAX COUNTY (3 years)

continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Kelly Pride Hebron (Appointed 11/08- 12/17 by McKay) Term exp. 12/20	Lee District Representative		Lusk	Lee
Melody McGuin Thorson (Appointed 03/18 by Storck) Term exp. 12/20	Mount Vernon District Representative		Storck	Mount Vernon
Nalin Jain (Appointed 1/19 by L. Smyth) Term exp. 12/20	Providence District Representative		Palchik	Providence
Robert Kyle McDaniel (Appointed 1/19 by Herrity) Term exp. 12/20	Springfield District Representative		Herrity	Springfield

SOUTHGATE COMMUNITY CENTER ADVISORY COUNCIL (2 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Luis Ortiz Lopez (Appointed 10/16- 3/18 by Hudgins) Term exp. 3/20	Fairfax County #9 (Youth) Representative		By Any Supervisor	At-Large

TENANT LANDLORD COMMISSION (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Christopher Lee Kocsis (Appointed 3/99-11/00 by Hanley; 1/04-12/06 by Connolly; 12/09-1/16 by Bulova) Term exp. 12/18 <i>Deceased</i>	Landlord Member #2 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Angelina Panettieri; appointed 6/11-1/15 by L. Smyth) Term exp. 1/18	Tenant Member #1 Representative		By Any Supervisor	At-Large
Amy Purnell (Appointed 9/16-1/17 by Bulova) Term exp. 1/20	Tenant Member #2 Representative		By Any Supervisor	At-Large

TRAILS, SIDEWALKS AND BIKEWAYS COMMITTEE (2 years)

CONFIRMATION NEEDED:

- Ms. Deborah C. Cohen as the Fairfax Area Disability Services Board Representative

TREE COMMISSION (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Laura L. Beaty (Appointed 5/19 by Smyth) Term exp. 10/20	Providence District Representative		Palchik	Providence

TRESPASS TOWING ADVISORY BOARD (3 years)

[Note: Advisory board created effective 7/1/06 to advise the Board of Supervisors with regard to the appropriate provisions of Va. Code Section 46.2-1233.2 and Fairfax County Code 82.5-32.]

Membership: Members shall be Fairfax County residents. A towing representative shall be defined as a person who, prior to the time of his or her appointment, and throughout his or her term, shall be an operator of a towing business in Fairfax County.

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Fred Scheler (Appointed 7/06-10/17 by Bulova) Term exp. 9/30	Towing #1 Representative		By Any Supervisor	At-Large

TYSONS TRANSPORTATION SERVICE DISTRICT ADVISORY BOARD (2 YEARS)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Barry Mark; appointed 3/15-2/17 by Bulova) Term exp. 2/19 <i>Resigned</i>	Commercial or Retail Ownership #3 Representative		McKay	At-Large

WETLANDS BOARD (5 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Anita Van Breda (Appointed 12/13-2/16 by Bulova) Term exp. 12/20	At-Large #2 Representative		By Any Supervisor	At-Large

NEW BOARD

YOUNG ADULTS ADVISORY COUNCIL (YAA) (2 YEARS)
The Board of Supervisors established the Council on January 28, 2020
(There will be a total of 15 members. The appointees must be 20-34 years and would serve for 2-year terms limited to 2 full consecutive terms)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
NEW POSITION	Mason District Representative	Najma Mohamud	Gross	Mason

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2:00 p.m.

Matters Presented by Board Members

Board Agenda Item
November 17, 2020

2:00 p.m.

Items Presented by the County Executive

Board Agenda Item
November 17, 2020

ADMINISTRATIVE - 1

Streets into the Secondary System (Mason and Dranesville Districts)

ISSUE:

Board approval of streets to be accepted into the State Secondary System.

RECOMMENDATION:

The County Executive recommends that the street(s) listed below be added to the State Secondary System:

<u>Subdivision</u>	<u>District</u>	<u>Street</u>
Brooks Place	Mason	Brooks Place
Lucky Estates	Dranesville	Leesburg Pike Service Drive
Lucky Estates	Dranesville	Lucky Estates Drive

TIMING:

Routine.

BACKGROUND:

Inspection has been made of these streets, and they are recommended for acceptance into the State Secondary System.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1 – Street Acceptance Forms

STAFF:

Rachel Flynn, Deputy County Executive
William D. Hicks, P.E., Director, Land Development Services

Street Acceptance Form For Board Of Supervisors Resolution - June 2005

<p>FAIRFAX COUNTY BOARD OF SUPERVISORS FAIRFAX, VA</p> <p>Pursuant to the request to inspect certain streets in the subdivisions as described, the Virginia Department of Transportation has made inspections, and recommends that same be included in the secondary system.</p>	<p>VIRGINIA DEPARTMENT OF TRANSPORTATION - OFFICE OF THE ENGINEERING MANAGER, FAIRFAX, VIRGINIA</p> <p>REQUEST TO THE ENGINEERING MANAGER, FOR INCLUSION OF CERTAIN SUBDIVISION STREETS INTO THE STATE OF VIRGINIA SECONDARY ROAD SYSTEM.</p> <p>PLAN NUMBER: 25047-SD-001</p> <p>SUBDIVISION PLAT NAME: Brooks Place</p> <p>COUNTY MAGISTERIAL DISTRICT: Mason</p>
<p>ENGINEERING MANAGER: Houda A. Ali, PMP</p> <p>BY: <u><i>Nadia Alphonse</i></u></p>	<p style="text-align: center;">FOR OFFICIAL USE ONLY</p> <p>DATE OF VDOT INSPECTION APPROVAL: <u><i>09/08/2020</i></u></p>

STREET NAME	LOCATION		LENGTH MILE
	FROM	TO	
Brooks Place	CL Brooks Place at CL Glavis Road (Route 2277) 310' W CL Crosswoods Drive (Route 2274)	416' W to Beginning of Temporary Turnaround Easement	0.08

NOTES:	TOTALS:
5' Concrete Sidewalk on Both Sides to be maintained by VDOT	
	0.08

Street Acceptance Form For Board Of Supervisors Resolution - June 2005

<p>FAIRFAX COUNTY BOARD OF SUPERVISORS FAIRFAX, VA</p> <p>Pursuant to the request to inspect certain streets in the subdivisions as described, the Virginia Department of Transportation has made inspections, and recommends that same be included in the secondary system.</p>	<p>VIRGINIA DEPARTMENT OF TRANSPORTATION - OFFICE OF THE ENGINEERING MANAGER, FAIRFAX, VIRGINIA</p> <p>REQUEST TO THE ENGINEERING MANAGER, FOR INCLUSION OF CERTAIN SUBDIVISION STREETS INTO THE STATE OF VIRGINIA SECONDARY ROAD SYSTEM.</p>		
	<p>PLAN NUMBER: 7723-SD-02</p>		
	<p>SUBDIVISION PLAT NAME: Lucky Estates</p>		
	<p>COUNTY MAGISTERIAL DISTRICT: Dranesville</p>		
<p>ENGINEERING MANAGER: Houda A. Ali, PMP</p> <p>BY: <u> <i>Nadia Alphonse</i> </u></p>	<p>FOR OFFICIAL USE ONLY</p> <p>DATE OF VDOT INSPECTION APPROVAL: <u> <i>09/08/2020</i> </u></p>		
STREET NAME	LOCATION		LENGTH MILE
	FROM	TO	
Leesburg Pike Service Drive	CL Wolftrap Run Road (Route 5760) - 1,208' NW CL Lewinsville Road (Route 694)	700' NW to CL Lucky Estates Drive	0.13
Lucky Estates Drive	CL Leesburg Pike Service Drive - 700' NW CL Wolftrap Run Road (Route 5760)	766' SW to End of Cul-de-Sac	0.15
NOTES:			TOTALS:
Leesburg Pike Service Drive: 5' Concrete Sidewalk on the South Side to be maintained by Fairfax County.			0.28

ADMINISTRATIVE - 2

Reinstatement of Plans Examiner Status Under the Expedited Land Development Review Program

ISSUE:

Board of Supervisors' action to reinstate one individual as a Plans Examiner to participate in the Expedited Land Development Review Program, pursuant to the adopted criteria and recommendation of the Advisory Plans Examiner Board (APEB).

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors (the Board) take the following actions:

- Reinstatement of the following individual, identified with his registration number, as a Plans Examiner:

Shane Revell

#264

TIMING:

Routine.

BACKGROUND:

On August 7, 1989, the Board adopted Chapter 117 (Expedited Land Development Review) of *The Code of the County of Fairfax, Virginia*, (The Code) establishing a Plans Examiner Program under the auspices of an APEB. The purpose of the Plans Examiner Program is to expedite the review of site and subdivision plans submitted by certain specially qualified applicants, i.e., Plans Examiners, to the Department of Land Development Services.

The Code requires that the Board designate an individual's status under the Expedited Land Development Review Program.

Plans Examiner Status: Candidates for status as Plans Examiners must meet the education and experience requirements contained in Chapter 117. After the review of his application and credentials, the APEB has found that the one candidate listed above satisfies these requirements. This finding was documented in a letter dated July 14,

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2020, from the Chairman of the APEB, James H. Scanlon, P.E., L.S., to Chairman Jeffrey C. McKay.

Inactive Status: Chapter 117 requires Plans Examiners to participate in the Board adopted Continuing Education Program. Consonant with the requirements of Section 117-1-3(a), and subject to Board approval, the APEB will recommend designation of inactive status for individuals electing not to pursue the continuing education program. This status designation continues until and if they wish to reactivate their Designated Plans Examiner (DPE) status by completing the continuing education requirements. An inactive status makes these individuals ineligible to participate in the expedited plan process procedure. At the time, they are placed in inactive status, individuals are provided with information concerning requirements for reinstatement as an active DPE.

Staff concurs with these recommendations as being in accordance with Chapter 117 and the Board-adopted criteria.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment I – Letter dated July 14, 2020, from the Chairman of the APEB to the Chairman of the Board of Supervisors

STAFF:
Rachel Flynn, Deputy County Executive
William D. Hicks, P.E., Director, Department of Land Development Services



Engineers & Surveyors Institute

"a public/private partnership"

4795 Meadow Wood Lane
Suite 115 East
Chantilly, VA 20151
703-263-2232

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Executive Director
Jeffrey L. Blackford, P.E.

July 14, 2020

Hon. Jeffrey C., McKay, Chairman
Fairfax County Board of Supervisors
12000 Government Center Parkway
Fairfax, VA 22035

Dear Chairman McKay,

The Board of Supervisors approved the following individual as Designated Plans Examiner, but his status was changed to inactive in 2007. He wishes to reactivate his status and has met the requirements set out by the reinstatement panel.

He has been found to meet the qualifications outlined in Chapter 117-1-2 of the Code of Fairfax County and to be in accordance with the criteria adopted by the Fairfax County Board of Supervisors.

Shane Revell – DPE #264 – Inactive on 6/18/2007

It is recommended by the Fairfax County Advisory Plans Examiner Board that he be granted active status.

Following the Board of Supervisors' approval of this recommendation, he will be notified of this change.

Sincerely,

James H. Scanlon, P.E., LS.

Chairman

Fairfax County Advisory Plans Examiner Board

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ADMINISTRATIVE - 3

Authorization to Advertise a Public Hearing on the FY 2021 Mid-Year Review to Amend the Current Appropriation Level in the FY 2021 Revised Budget Plan

ISSUE:

Board approval of an advertisement for a public hearing to adjust the FY 2021 appropriation level. Section 15.2-2507 of the Code of Virginia requires that a public hearing be held prior to Board action to amend the current appropriation level.

RECOMMENDATION:

The County Executive recommends that the Board authorize staff to publish the advertisement for a public hearing.

TIMING:

Board Action is requested on November 17, 2020, to provide sufficient time to advertise the proposed public hearing on January 26, 2021, at a time to be determined by the Clerk.

BACKGROUND:

As the *FY 2021 Mid-Year Review* includes proposed adjustments in appropriation greater than one percent of total expenditures, a public hearing is required prior to Board action. In addition, the Code of Virginia requires that a synopsis of proposed changes be included in the advertisement.

The School *FY 2021 Mid-Year Review* is not included in the advertisement on November 17, 2020 and proposed adjustments will be presented to Board on a later date. It is expected that School Board funding adjustments will be included in the final FY 2021 Mid-Year Review package to be adopted on January 26, 2021.

ENCLOSED DOCUMENTS:

Attachments will be available online on Monday, November 16, 2020 at:
www.fairfaxcounty.gov/budget/fy-2021-mid-year-review

Attachment A – Proposed advertisement for public hearing
Attachment B – Memorandum to the Board of Supervisors dated November 17, 2020 from Bryan Hill, County Executive, with attachments, transmitting the County's *FY 2021 Mid-Year Review* with appropriation resolutions

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STAFF:

Bryan J. Hill, County Executive

Joseph Mondoro, Chief Financial Officer

Christina Jackson, Director, Department of Management and Budget

Philip Hagen, Deputy Director, Department of Management and Budget

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ADMINISTRATIVE - 4

Authorization for the Fairfax County Police Department to Apply for and Accept Grant Funding from the U.S. Department of Justice, Office of Justice Programs, Edward Byrne Memorial Justice Assistance Grant

ISSUE:

Board of Supervisors authorization is requested for the Fairfax County Police Department (FCPD) to apply for and accept funding if received, from the U.S. Department of Justice, Office of Justice Programs, Edward Byrne Memorial Justice Assistance Grant (JAG) in the amount of \$114,017. Funding will be used to purchase approximately 370 non-ballistic riot helmets with riot face shields. These units are not funded and would be used to replace some existing units as well as increase the number of available helmets for responses to civil unrest. The grant period for this award is October 1, 2019 to September 30, 2023. No Local Cash Match is required. This grant is an ongoing award that the Police Department receives annually and is included in the FY 2021 Adopted Budget Plan; however, a Board item is required in order to meet grantor requirements. If the actual award is significantly different than the application amount, another item will be submitted to the Board requesting appropriation of grant funds. Otherwise, staff will process the award administratively per Board policy.

RECOMMENDATION:

The County Executive recommends that the Board authorize the Police Department to apply for and accept funding if received, from the U.S. Department of Justice, Office of Justice Programs, Edward Byrne Memorial Justice Assistance Grant in the amount of \$114,017. The County Executive also recommends the Board authorize the Chairman of the Board of Supervisors, the County Executive and/or a designee appointed by the County Executive to enter into the grant agreement and any related agreements, including but not limited to Federal Subaward Agreements, on behalf of the County.

TIMING:

Board action is requested on November 17, 2020.

BACKGROUND:

The Edward Byrne Memorial Justice Assistance Grant (JAG) Program is the primary provider of federal criminal justice funding to states and units of local government. The Bureau of Justice Assistance (BJA) will award JAG Program funds to eligible units of

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local government as described in this FY2020 JAG Program Local Solicitation (BJA will issue a separate solicitation for states). The U.S. Department of Justice, Office of Justice Programs, Edward Byrne Memorial Justice Assistance Grant provides awards of federal funding to support a range of local program areas including law enforcement equipment, technology improvements, and crime prevention programs.

The main goals of purchasing the Civil Disturbance Unit (CDU) Personal Protective Equipment (PPE) are to replace aged equipment, enhance officer safety, increase the capability of the Police Department to respond to incidents of civil unrest within Fairfax County or, based upon a mutual aid request, within the Commonwealth of Virginia or the National Capital Region (NCR), and meet current equipment standards. The grant will be used to purchase CDU PPE that is certified to meet British Standard 7971 and Home Office Scientific Development Branch (HOSDB) Flame Retardant Overall standards, the interim standard identified by the National Institute of Justice (NIJ) in its July 5, 2017, CDU PPE strategy statement. Protective equipment is not required for every situation CDU handles, but must be available when needed to protect officers. This equipment was purposely built to withstand the threats that face modern policing during civil unrest. The equipment itemized in this grant provides improved protection against thrown objects and debris. Additionally, the helmets have a petroleum shedding visor and rear neck protection and afford a high degree of impact and concussive protection.

As part of the grant application process and in accordance with the special conditions of the Justice Assistance Grant program, the grant application must be made available for review by the governing body of the local government during a scheduled meeting open to the public. The application must also be made available to provide an opportunity for community members to comment. The grant will be made available to the public at the Board meeting as part of this administrative item to comply with the above requirement.

FISCAL IMPACT:

Grant funding in the amount of \$114,017 is being requested to provide funds to purchase non-ballistic riot helmets with riot face shields for response to incidents of violent civil unrest and riots within the Commonwealth of Virginia and the NCR. No Local Cash Match is required. This action does not increase the expenditure level of the Federal-State Grant Fund, as funds are held in reserve for anticipated grant awards in FY 2021. This grant does not allow the recovery of indirect costs.

CREATION OF NEW POSITIONS:

No positions will be created by this grant award.

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ENCLOSED DOCUMENTS:

Attachment 1 – Program Narrative of the Grant Application

STAFF:

David M. Rohrer, Deputy County Executive
Colonel Edwin C. Roessler Jr., Chief of Police

Department of Criminal Justice Services – Justice Assistance Grant Narrative
Byrne Memorial Justice Assistance Grant Program: Local Solicitation 2020

Program Narrative

I) Civil Disturbance Unit Personal Protective Equipment \$114,017

A.) Statement of the Problem

The Fairfax County Police Department (FCPD) is in the Washington, DC metropolitan area also known as the National Capitol Region (NCR). The Department is comprised of 1458 sworn police officers not including the 34 APPOs and 325 civilian staff and is the largest local law enforcement agency in the Commonwealth of Virginia. The Department serves a culturally diverse residential and business population with a residential population of more than 1.2 million persons. One of the Department's responsibilities is to safeguard the public during large gatherings and instances of civil unrest. Additionally, because of its size and proximity to the nation's Capital, the FCPD has and will continue to be called upon to assist neighboring jurisdictions in Virginia and across the NCR during instances of civil unrest.

In 2015, the Civil Disturbance Unit (CDU) subcommittee within the Metropolitan Washington Council of Governments (MWCOG) began looking to address issues related to personal protective equipment (PPE), training, tactics, and professionalization of the CDU specialty in law enforcement after violent riots erupted in the City of Baltimore. In May of 2017, the MWCOG CDU subcommittee coordinated and partnered with the National Institute of Justice (NIJ) to host a gathering of state and local law enforcement agencies and technical organizations in Washington, D.C., with the purpose of discussing a range of issues related to CDUs, with a focus on Personal Protective Equipment (PPE). The goal of this gathering was to adopt an interim U.S. standard for CDU PPE. As a direct result of this gathering, the National Institute of Justice issued the following equipment strategy statement on July 5, 2017:

- *For U.S. law enforcement agencies planning to procure new or certified CDU PPE, NIJ has identified either British Standard 7971, Protective clothing and equipment for use in violent situations and in training, or standards developed by the U.K. Home Office [i.e., HOSDB Blunt Trauma Protector Standard for UK Police (2007), PSDB Protective Headwear Standard for UK Police (2004), and HOSDB Flame Retardant Overalls Standard for UK Police (2008)] as performance standards that may meet agencies' needs until such time as U.S. standards can be developed.*

NIJ then sought qualified individuals to serve on a Special Technical Committee (STC) on CDU PPE. The purpose of the STC, comprised of more than 25 CDU subject matter experts from around the country, is to oversee the development of performance standards for CDU PPE that meet the needs of U.S. law enforcement.

The CDU PPE currently in use in Fairfax County is approximately 15 years old and was never designed for the purpose with which it is currently being used. It was not designed or tested to meet any current industry safety standard and was not purposely built to meet the threats that law enforcement encounter. There is an urgency to replace this antiquated equipment to properly protect our officers and reduce the chance of injury to the public. As part of a regional CDU response plan, large agencies within Northern Virginia, including the FCPD, will be standing up Level 1 and Level 2 CDU teams that are capable of mutual aid during the violent civil unrest and riot environments. Fairfax County is leading this regional effort and will be standing up a Level 1 team to add to its Level 2 team capacity. The equipment purchased in this grant will be used to equip a portion of this Level 1 team.

B.) Program Design and Implementation

The main goal of purchasing the CDU PPE will be to enhance the capability of the Fairfax County Police Department (FCPD) to respond to incidents of violent civil unrest and riots within the Commonwealth of Virginia and the NCR. The grant will be utilized to purchase CDU PPE that is certified to meet British Standard 7971 and HOSDB Flame Retardant Overall standards, the interim standard identified by NIJ in its July 5, 2017, CDU PPE strategy statement. This equipment was purposely built to withstand the threats that face modern policing during civil unrest and violent riots. The equipment will allow the FCPD to present a soft appearance by concealing the protective padding underneath a protective outer layer. This diminishes the more aggressive appearance that exterior padding often conveys while affording the officer an increased level of protection. The equipment itemized in this grant provides protection against incendiary devices (Molotov Cocktails, fireworks, etc.) and improved protection against thrown objects and debris. Additionally, the helmets afford a high degree of impact and concussive protection that current equipment does not. The equipment will include public disorder helmets with petroleum shedding visor and rear neck protection; limb guards for arms (shoulders, upper arm, elbow, lower arm); leg protection (groin, thigh, knee, shin); fire extinguishers and carriers; equipment bags; and round solo shields.

C.) Capabilities/Competencies

Currently, FCPD CDU officers are issued PPE that was purchased before 1999. This equipment is obsolete and outside its useful life cycle. It was designed as sports equipment and repurposed in the police environment for use to protect officers during civil unrest. The equipment provides no protection against incendiary devices and provides relatively poor protection against thrown objects when compared to modern purpose built PPE designed and certified to meet a specific standard. The FCPD also has riot gear, manufactured by Hatch, that is distributed to officers on an “as needed basis” during potentially violent civil disturbances and collected after the deployment. This equipment was purchased over 15 years ago, and is outside its useful life. It provides no

protection against incendiary devices and provides relatively poor protection against thrown objects when compared to modern purpose built PPE designed and certified to meet a specific standard.

The helmets currently in use by the FCPD are military surplus ballistic Personnel Armor System for Ground Troops (PASGT) Kevlar helmets which provide minimal concussive protection, the primary threat for officers in a civil disturbance environment. Additionally, they provide very limited protection from incendiary devices such as Molotov cocktails. They provide no petroleum shedding protection for the neck and the visor the helmet and visor meet no standard for protection in riot environment.

D) Impact/Outcomes and Evaluation/Plan for Collecting Data for Performance Measures

After acceptance of the grant award, assigned departmental staff will utilize accepted financial practices to establish a grant-funded appropriation in the county financial system. Staff will establish appropriate purchase orders/contracts for the acquisition of the defined CDU PPE. Approved items will be acquired, and the use of the equipment will be implemented immediately. The addition of the modern CDU PPE will allow the FCPD CDU to adopt modern CDU small team tactics designed to administer the more precise use of force against agitators as opposed to use of force across a wider population of agitators and onlookers, thus reducing exposure to civil liability and risk of injury. We expect that the increased protection of officers will lead to the less reactive use of force and allow for a more controlled use of coordinated force to deescalate violent civil unrest. The improved CDU PPE is a portion of a regional and national initiative to modernize and standardize CDU training and tactics. Included within the wider goal is the ability to improve regional response to crowd management and crowd control across Virginia and in the NCR.

An evaluation as to the impact of the newly acquired equipment will be conducted on a quarterly basis by the grant manager. This will help us to determine the effectiveness of the equipment in training and real life situations. We will closely monitor the heat burden associated with the use of this gear and the effectiveness of the PPE against primary riot threats (blunt force trauma and incendiaries). This information will guide us in the development of national CDU PPE standards with the assistance of the NIJ. This information will be shared with the Virginia Department of Emergency Management, our partner law enforcement agencies in Virginia, and agencies in the NCR.

Budget Summary

Budget Summary

Note: Any errors detected on this page should be fixed on the corresponding Budget Detail tab.

Budget Category	Year 1		Year 2 (if needed)		Year 3 (if needed)		Year 4 (if needed)		Year 5 (if needed)		Totals
	Federal Request	Non-Federal Request	Federal Request	Non-Federal Request	Federal Request	Non-Federal Request	Federal Request	Non-Federal Request	Federal Request	Non-Federal Request	
A. Personnel	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
B. Fringe Benefits	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
C. Travel	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
D. Equipment	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
E. Supplies	\$114,016	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$114,016
F. Construction	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
G. Subawards (Subgrants)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
H. Procurement Contracts	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
I. Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Direct Costs	\$114,016	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$114,016
J. Indirect Costs	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Project Costs	\$114,016	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$114,016

Does this budget contain conference costs which is defined broadly to include meetings, retreats, seminars, symposia, and training activities? - Y/N

No

ADMINISTRATIVE - 5

Authorization for the Department of Neighborhood and Community Services to Apply for and Accept Grant Funding from the Virginia Department of Education Child and Adult Care Food Program and Summer Food Service Program

ISSUE:

Board of Supervisors authorization is requested for the Department of Neighborhood and Community Services (NCS) to apply for and accept grant funding, if received, from the Virginia Department of Education Child and Adult Care Food Program and the Summer Food Service Program in the amount of \$1,515,270. Funding will be used to provide meals to children participating in the Fairfax County Supporting Return to School (SRS) program (\$1,306,752) and at programs available at five NCS community center locations (\$208,518) during the COVID-19 pandemic. There are no grant positions associated with this application. The grant period for the SRS and the NCS community center programs is the 2020-2021 school year. No Local Cash Match is required. If the actual award received is significantly different from the application amount, another item will be submitted to the Board requesting appropriation of grant funds. Otherwise, staff will process the award administratively as per Board policy. Board authorization is also requested for the Chairman of the Board of Supervisors, the County Executive and/or a designee appointed by the County Executive to enter into the grant agreement and any related agreements, including but not limited to Federal Subaward Agreements, on behalf of the County.

RECOMMENDATION:

The County Executive recommends that the Board authorize the Department of Neighborhood and Community Services to apply for and accept grant funding, if received, from the Virginia Department of Education Child and Adult Care Food Program and the Summer Food Service Program in the amount of \$1,515,270. Funding will be used to provide meals to children participating in the Fairfax County Supporting Return to School (SRS) program and at programs available at five NCS community center locations during the COVID-19 pandemic. No Local Cash Match is required and there are no positions associated with this funding. The County Executive also recommends the Board authorize the Chairman of the Board of Supervisors, the County Executive and/or a designee appointed by the County Executive to enter into the grant agreement and any related agreements, including but not limited to Federal Subaward Agreements, on behalf of the County.

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TIMING:

Board action is requested on November 17, 2020. Due to the grant application deadline of October 1, 2020, the applications were submitted pending Board approval. This Board item is being presented at the earliest subsequent Board meeting. If the Board does not approve this request, the application will be immediately withdrawn.

BACKGROUND:

The U.S. Department of Agriculture (USDA) Child and Adult Care Food Program (CACFP) and the Summer Food Service Program (SFSP) are federally funded programs which provide payments for eligible meals served to participants who meet age and income requirements. Meals served by participating institutions and facilities must meet minimum guidelines set by the USDA.

USDA's Food and Nutrition Service (FNS) administers CACFP and SFSP through grants to States. The program is administered within most States by the State educational agency, health department, or social services departments. In Virginia, the Department of Health (VDH) administers the CACFP program for Family Day Care, (FDC), Child Care Centers, and Outside-School-Hours Child Care Centers, while the Virginia Department of Education (VDOE) administers the CACFP program for At-Risk Centers and the SFSP for participating centers.

USDA is currently focused on ensuring that America's families are safe, secure, and healthy during this public health national emergency. Therefore, USDA has recently granted States significant program flexibilities and contingencies to best serve program participants of CACFP and SFSP programs. The Virginia Department of Education has received approval for CACFP and SFSP flexibilities during the COVID-19 pandemic which include mealtime flexibility, parent pick-up of meals, non-congregate feeding, and meal pattern flexibility. As a sponsor of the CACFP and the SFSP, the Office for Children in NCS has applied for the above stated waivers for the school-age programs that are now available in the County. These waivers allow greater flexibility for programs to participate as At-Risk and for SFSP programs to continue during the 2020-2021 school year. Reimbursement rates for meals in the At-Risk and the SFSP programs are higher than rates in the regular CACFP program.

Typically, there are a total of 141 SACC centers participating in the CACFP program. Of the 141 centers, 104 Outside-School-Hours Centers operated during the school year as CACFP programs under VDH and 37 At-Risk centers operated during the school year as At-Risk CACFP under VDOE. Due to the pandemic and Fairfax County Public Schools starting the 2020-21 school year virtually, NCS developed a Supporting Return to School program at 37 school locations. With the USDA waivers, all 37 SRS programs will be participating in the At-Risk CACFP program. In addition, there are five

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NCS community centers that will be participating in the SFSP program, again utilizing the waivers that have become available.

FISCAL IMPACT:

Grant funding in the amount of \$1,515,270 is being requested to provide meals to children participating in the Fairfax County Supporting Return to School program and at programs available at five NCS community center locations during the COVID-19 pandemic. No Local Cash Match is required. This action does not increase the expenditure level of the Federal-State Grant Fund as funds are held in reserve for unanticipated awards in FY 2021. This grant does allow the recovery of indirect costs; however, indirect costs have not been included in the applications, as the full reimbursement amount for which the County will be eligible is necessary to help cover the cost of meals.

CREATION OF POSITIONS:

There are no new positions associated with this grant award.

ENCLOSED DOCUMENTS:

Attachment 1 - Summary of Proposed Grant Funding

STAFF:

Tisha Deeghan, Deputy County Executive
Christopher A. Leonard, Director, Neighborhood and Community Services (NCS)
Anne-Marie D. Twohie, Director, Office for Children, NCS

CACFP and SFSP GRANT**SUMMARY OF GRANT PROPOSAL**

Grant Title:	Child and Adult Care Food Program and Summer Food Service Program Grant
Funding Agency:	Virginia Department of Education
Applicant:	Department of Neighborhood and Community Services (NCS)
Partners:	Fairfax County Public Schools
Purpose of Grant:	<p>The U. S. Department of Agriculture (USDA) Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP) are federally funded programs which provide payments for eligible meals served to participants who meet age and income requirements. Due to the pandemic, USDA has provided several waivers which allow greater flexibility for programs to participate as At-Risk and SFSP programs during the 2020-2021 school year. Meals served by participating institutions and facilities must meet minimum guidelines set by the USDA. The purpose of this grant is to provide meals to children participating in the Fairfax County Supporting Return to School programs located in Fairfax County Public Schools, and at programs available at five NCS community center locations during this pandemic.</p>
Funding Amount:	<p>Total funding of \$1,515,270. The final amount of reimbursement is dependent on meal participation at SRS and NCS centers. The grant period for the SRS and the NCS community center programs is the 2020-2021 school year.</p>
Positions:	There are no new grant positions associated with this funding.
Proposed Use of Funds:	Funding will be used to provide meals to children participating in the Fairfax County Supporting Return to School programs and at the five NCS community centers.
Performance Measures:	The success of the program will be based on full compliance with USDA CACFP and SFSP regulations.
Grant Period:	The grant period is for the 2020-2021 school year.

ADMINISTRATIVE - 6

Approval of a “Watch for Children” Sign as Part of the Residential Traffic Administration Program (Hunter Mill District)

ISSUE:

Board endorsement of a “Watch for Children” sign as part of the Residential Traffic Administration Program (RTAP).

RECOMMENDATION:

The County Executive recommends approval for the installation of the following:

- One “Watch for Children” sign on Pinoak Lane (Hunter Mill District)

In addition, the County Executive recommends that the Fairfax County Department of Transportation (FCDOT) be requested to schedule the installation of the approved “Watch for Children” sign as soon as possible.

TIMING:

Board action is requested on November 17, 2020.

BACKGROUND:

The RTAP allows for installation of “Watch for Children” signs at the primary entrance to residential neighborhoods, or at a location with an extremely high concentration of children relative to the area, such as playgrounds, day care centers, or community centers. FCDOT reviews each request to ensure the proposed signs will be effectively located and will not be in conflict with any other traffic control devices.

On September 23, 2020, FCDOT received verification from the Hunter Mill District Supervisor’s Office confirming community support for a “Watch for Children” sign on Pinoak Lane.

FISCAL IMPACT:

Funding in the amount of \$400 for the “Watch for Children” sign is available in Fund 2G25-076-000.

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ENCLOSED DOCUMENTS:

None

STAFF:

Rachel Flynn, Deputy County Executive

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)

Gregg Steverson, Deputy Director, FCDOT

Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT

Neil Freschman, Chief, Traffic Engineering Section, FCDOT

Steven K. Knudsen, Transportation Planner, Traffic Engineering Section, FCDOT

Zuhra Malik, Transportation Planner, Traffic Engineering Section, FCDOT

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ADMINISTRATIVE - 7

Authorization to Advertise a Public Hearing on Proposed Amendments to Chapter 61 (Building Provisions) of *The Code of the County of Fairfax, Virginia* (County Code) Regarding Penalties

ISSUE:

Board of Supervisors authorization to advertise a public hearing on proposed amendments to Chapter 61 (Building Provisions) of *The Code of the County of Fairfax, Virginia* (County Code) that will (1) authorize civil penalties for violations of Part I of the Uniform Statewide Building Code (USBC), (2) authorize civil penalties for violations of Section 105 of USBC Part III (Unsafe Structures or Structures Unfit for Human Habitation), (3) increase the amount of the civil penalties for violations of Parts I and III of the USBC to the maximum allowed by the Code of Virginia, (4) clarify the range of criminal penalties available for violations of the Building Provisions, and (5) align the provisions regarding court-ordered abatement of violations with Virginia Code § 36-106.

RECOMMENDATION:

The County Executive and County Attorney recommend that the Board authorize the advertisement of the proposed amendments as set forth in Attachment 1.

The proposed amendments have been prepared by Land Development Services (LDS) in coordination with the Department of Code Compliance (DCC) and the Office of the County Attorney.

TIMING:

Board action is requested on November 17, 2020, to provide sufficient time to advertise a public hearing before the Board on December 1, 2020, at 4:00 p.m.

BACKGROUND:

Under the Building Provisions, violations of Chapter 61 are deemed criminal misdemeanors, punishable by fines, unless otherwise designated for enforcement through civil penalties. However, criminal prosecutions are not always the best vehicle for securing compliance because of the potential long-term impacts of a criminal conviction and the need, in some situations, for a prosecutor to handle the presentation of the case. Enabling legislation codified in Virginia Code § 36-106(C) authorizes the County to adopt a uniform schedule of civil penalties for violations of the USBC. Chapter 61 currently makes most violations of Part III of the USBC subject to civil

penalties. The proposed amendments would allow the Director to seek civil penalties, rather than criminal convictions, for any violation of Parts I and III.

DCC and LDS seek to improve the Building Provisions, by aligning them with enabling legislation and strengthening the civil penalty provisions. Virginia Code § 36-106(C) authorizes the County to seek civil penalties up to the amount of \$100 for the initial summons and not more than \$350 for each additional summons. The total penalties for all summonses associated with a single violation may not exceed \$4,000. The proposed amendments would increase the penalties for subsequent violations from \$150 to \$350 and the total penalties from \$3,000 to \$4,000. The proposed amendments would further strengthen the penalty provisions by clarifying that incarceration is an available penalty, when authorized by the Virginia Code, for violations of the Building Provisions that are not subject to civil penalties. County staff and the County Attorney's Office will collaborate to enforce the ordinance and seek civil penalties, as appropriate. Once civil penalties are designated for violation of a USBC provision, criminal prosecution of such a violation is precluded under the enabling legislation.

The proposed amendments also add a provision regarding the abatement of violations concerning nonresidential buildings. This provision is added to track the language in the Virginia Code.

PROPOSED AMENDMENTS:

The proposed amendments include revisions to the provisions for penalties and other legal actions related to enforcement of the ordinance.

The proposed amendments include the following revisions to Section 61-7-1 Penalties:

- 1) Add Part I of the USBC to the schedule of penalties generally applicable to violations of Part III of the USBC, to allow for the use of civil penalties in lieu of criminal sanctions for violations of the Building Code.
- 2) Authorize civil penalties for violations of Section 105 of USBC Part III (Unsafe Structures or Structures Unfit for Human Habitation), by deleting text excluding such violations from the provision regarding civil penalties.
- 3) Increase the amount of the civil penalties for subsequent civil summonses from \$150 to \$350, and increase the maximum total civil penalties from \$3,000 to \$4,000.
- 4) Clarify that incarceration is an available punishment for violations of the Building Provisions, where authorized by the Virginia Code.
- 5) Align the provisions regarding court-ordered abatement of violations with Virginia Code § 36-106.

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The proposed amendments are included as Attachment 1.

REGULATORY IMPACT:

The proposed amendments provide for the use of civil penalties in lieu of criminal sanctions to address violations of the USBC Part I and Section 105 of Part III. The penalties for subsequent civil summonses for any violation of Part I or Part III will increase from \$150 to \$350, and the maximum total penalties would increase from \$3,000 to \$4,000. The penalty for the initial civil summons would remain at \$100. The proposed penalties are the maximum allowed under the Code of Virginia.

FISCAL IMPACT:

Implementation of the proposed amendments are not expected to have an immediate impact on the County budget, but the County Attorney's Office will need to monitor the impact of absorbing this work to determine if additional staffing is needed. Any civil penalties assessed by the court will be paid to Fairfax County.

ENCLOSED DOCUMENTS:

Attachment 1 – Amendments to Chapter 61 (Building Provisions)

STAFF:

Rachel Flynn, Deputy County Executive
Jack Weyant, Director, Department of Code Compliance
William D. Hicks, P.E., Director, Department of Land Development Services

ASSIGNED COUNSEL:

David Stoner, Deputy County Attorney
Sara Silverman, Assistant County Attorney

**PROPOSED AMENDMENTS
TO
CHAPTER 61 (BUILDING PROVISIONS)
OF THE CODE OF THE COUNTY OF FAIRFAX VIRGINIA**

1 **Amend Article 7 Penalties, Section 61-7-1 Penalties, by revising it to read as follows:**

2
3 Section 61-7-1. - Penalties.

4 Whoever violates any provisions of this Chapter, by doing a prohibited act, or failing to
5 perform a required act, or failing to perform permitted acts in the prescribed manner shall be
6 subject to the penalties as specified in the Code of Virginia and the USBC.

7
8 (a) *Criminal*. Unless designated otherwise in this Article, violations of this Chapter are
9 misdemeanors and, upon conviction, may be punished by a fine or incarceration of not
10 more than that amount or period authorized for violations ~~of the USBC by the Code of~~
11 ~~Virginia, § 36-106, as amended applicable;~~ additionally, if the violation remains
12 ~~uncorrected at the time of the conviction, the court shall order the violator to abate or~~
13 ~~remedy the violation in good order to comply with the Code. Except as otherwise~~
14 ~~provided by the court for good cause shown, any such violator shall abate or remedy the~~
15 ~~violation within six months of the date of conviction. Each day during which the~~
16 ~~violation continues after the court ordered abatement period has ended shall constitute a~~
17 ~~separate offense.~~

18
19 (b) *Civil*.

20 (1) There are hereby established civil penalties for any violation of the provisions of
21 Part I of the USBC, known as the Virginia Construction Code, and Part III of the
22 USBC, known as the Virginia Maintenance Code, (collectively, the Code);
23 ~~excluding the provisions of Section 105 of the Code—Unsafe Structures or~~
24 ~~Structures Unfit for Human Habitation, which are prosecuted as set forth in~~
25 ~~Subsection (a) above. Upon failure to abate or remedy pursuant to a notice of~~
26 ~~violation, the Building Official (with respect to the Virginia Construction Code),~~
27 ~~Property Maintenance Code Official (with respect to the Virginia Maintenance~~
28 ~~Code), or their designee may issue a civil summons to any person in violation of~~
29 ~~any of the provisions of the Virginia Maintenance Code as enumerated herein. The~~
30 ~~penalty for any one violation shall be a civil penalty of not more than \$100 for the~~
31 ~~initial summons, and not more than \$350 \$150 for each additional summons. Each~~
32 ~~day during which the violation is found to have existed shall constitute a separate~~
33 ~~offense. However, specified violations arising from the same operative set of facts~~
34 ~~shall not be charged more frequently than once in any ten-day period, and a series~~
35 ~~of specified violations arising from the same operative set of facts shall not result in~~
36 ~~civil penalties which exceed a total of \$4,000 \$3,000. Designation of a particular~~
37 ~~Code violation for a civil penalty pursuant to this section shall be in lieu of criminal~~
38 ~~sanctions, and except for any violation resulting in injury to persons, such~~
39 ~~designation shall preclude the prosecution of a violation as a misdemeanor.~~

- 1 (2) Any person summoned for a scheduled violation may make an appearance in person
2 or in writing by mail to the Department of Finance prior to the date fixed for trial in
3 court. Any person so appearing may enter a waiver of trial, admit liability, and pay
4 the civil penalty established for the offense charged. Such person shall be informed
5 of their right to stand trial and that a signature to an admission of liability will have
6 the same force and effect as a judgment of court. As a condition of waiver of trial,
7 admission of liability, and payment of a civil penalty, the violator and a
8 representative of the locality shall agree in writing to terms of abatement or
9 remediation of the violation within six months after the date of payment of the civil
10 penalty.
- 11 (3) If a person charged with a scheduled violation does not elect to enter a waiver of
12 trial and admit liability, the violation shall be tried in the General District Court in
13 the same manner and with the same right of appeal as provided for by law. In any
14 trial for a scheduled violation authorized by this section, it shall be the burden of the
15 locality to show the liability of the violator by a preponderance of the evidence. An
16 admission of liability or finding of liability shall not be a criminal conviction for
17 any purpose.
- 18 (4) If the violation concerns a residential unit, and if the violation remains uncorrected
19 at the time of assessment of the civil penalty, the court shall order the violator to
20 abate, or otherwise remedy through hazard control, the violation in order to comply
21 with the Code. Except as otherwise provided by the court for good cause shown,
22 any such violator shall abate, or otherwise remedy through hazard control, the
23 violation within six months of the date of the assessment of the civil penalty.
- 24 (5) If the violation concerns a nonresidential building or structure, and if the violation
25 remains uncorrected at the time of assessment of the civil penalty, the court may
26 order the violator to abate, or otherwise remedy through hazard control, the
27 violation in order to comply with the Code. Any such violator so ordered shall
28 abate, or otherwise remedy through hazard control, the violation within the time
29 specified by the court.
- 30 (6) The remedies provided for in this Section are cumulative and not exclusive and
31 shall be in addition to any other remedies provided by law.

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ACTION - 1

Approval of Revisions to Procedural Memorandum No. 11-01, Exempt Service

ISSUE:

Revisions to Fairfax County Procedural Memorandum No. 11-01, Exempt Service, are required to update Appendix 2, Fairfax County Code, Personnel Regulations and Procedural Memoranda Applicable to Exempt Service.

RECOMMENDATION:

The County Executive recommends the Board of Supervisors approve the proposed revisions to Procedural Memorandum No. 11-01, Exempt Service, Appendix 2, as specified below.

TIMING:

Board action is requested on November 17, 2020, with the changes to Procedural Memorandum No. 11-01, Exempt Service, Appendix 2, retroactive to the date the Personnel Regulations implementing Paid Family Leave took effect, October 10, 2020.

BACKGROUND:

Procedural Memorandum No. 11-01 sets forth the policies applicable to the County's exempt service and is issued by the County Executive pursuant Fairfax County Code 3-1-2 (c):

The County Executive shall issue procedural directives, with the approval of the Board of Supervisors, for administration of the exempt service. Only such provisions of this Article and of Personnel Regulations, which specifically state that they are applicable to exempt employees, or which are made applicable through procedural directives provided herein, shall apply to the exempt service.

Appendix 2 lists the Fairfax County Code sections, Personnel Regulations, and Procedural Memoranda that are applicable to the County's exempt service. Section B of Appendix 2 has been updated to reflect that paid family leave has replaced parental leave in the Personnel Regulations. Procedural Memorandum 70-05 (Information Security) has been recently updated which necessitates the deletion of Procedural Memorandum 70-04 (Use of County Electronic Communications Services (Internet,

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Electronic Mail, Phonemail, and FAX, PDA) from Appendix 2, Section C, and the deletion of Fairfax County Personnel/Payroll Administration Policies and Procedures No. 50 (Computer Usage) from Appendix 2, Section D. Finally, Procedural Memorandum 63 (Paid Family Leave), has been added to Appendix 2, Section D.

FISCAL IMPACT:

None noted.

ENCLOSED DOCUMENTS:

Attachment 1: Procedural Memorandum No. 11-01, Exempt Service

STAFF:

Catherine Spage, Director, Department of Human Resources

ASSIGNED COUNSEL:

Karen Gibbons, Deputy County Attorney

Fairfax County, Virginia	PROCEDURAL MEMORANDUM No. 11-01	
TO: DEPARTMENT HEADS	DATE:	July 1, October 10, 2020
INITIATED BY: DEPARTMENT OF HUMAN RESOURCES	COUNTY EXECUTIVE APPROVAL:	
SUBJECT: EXEMPT SERVICE		

Commented [AJ1]: Updated date. Effective the date paid family leave takes effect.

I. PURPOSE.

Procedural Memorandum No. 11-01 establishes the personnel policies and procedures governing the administration of the exempt service for the County.

II. AUTHORITY AND SCOPE.

A. This procedural memorandum is issued by the County Executive with the approval of the Board of Supervisors pursuant to Fairfax County Code § 3-1-2(c).

B. This procedural memorandum supersedes Procedural Memorandum No. 11-01 dated ~~March 6, 2020~~ **July 1, 2020**. The Board of Supervisors and County Executive expressly reserve the right to alter or amend any or all of the provisions of this procedural memorandum at any time.

Commented [AJ2]: Updated date

C. Any provision of this procedural memorandum that conflicts with any current or future section of the Code of Virginia, the Merit System Ordinance, or Personnel Regulations is without effect. The ineffectiveness of any conflicting provision shall in no way affect or impair the effectiveness of all other provisions of this procedural memorandum.

III. DEFINITIONS.

A. **APPOINTING AUTHORITY** means the officer, board, commission, person, or group of persons having the power by virtue of state law or County ordinance to make personnel appointments. The appointing authority is generally responsible for personnel administration within a given department or personnel area. As used in this procedural memorandum, the term “appointing authority” is synonymous with the term “department head.”

B. **BOARD OF SUPERVISORS** means the Fairfax County Board of Supervisors.

- C. **CLASS** means a group of positions, which are sufficiently alike in general duties and responsibilities to warrant the use of the same title, specification and pay range.
- D. **COMPETITIVE SERVICE** means all officers and positions in the service of the County as defined in the Merit System Ordinance.
- E. **CONSTITUTIONAL OFFICERS** mean the Commonwealth's Attorney for Fairfax County, the Sheriff for Fairfax County, and the Clerk of the Circuit Court for Fairfax County.
- F. **COUNTY** means Fairfax County, Virginia.
- G. **COUNTY EMPLOYEE BENEFITS** means the benefits provided or offered by the County to merit employees, including, but not limited to the following:
- Health, dental and vision insurance;
 - Flexible spending accounts ("FSA");
 - Group term life insurance;
 - Long-term disability insurance;
 - Retirement Plan;
 - Deferred compensation plan;
 - Paid annual and sick leave; and
 - Paid holidays.
- H. **COUNTY CODE** means the Fairfax County Code.
- I. **DEPARTMENT HEAD** means an employee appointed by the Board of Supervisors or the County Executive to oversee, direct or manage a major functional division (personnel area) of County government, whether formally known as a department or not, under the general direction of the County Executive, and to act as the appointing authority for the positions assigned to that organization. As used in this procedural memorandum, the term "department head" is synonymous with the term "appointing authority."
- J. **ELECTED AND APPOINTED OFFICIALS** mean members of the Board of Supervisors, constitutional officers and the General Registrar for the County.
- K. **EXEMPT ATTACHED EMPLOYEE** means a person employed by a non-County public agency attached to the County for payroll purposes only pursuant to an agreement made in accordance with County Code §§ 3-1-1-(c) and 3-1-2(b)(4).

- L. **EXEMPT BENEFITS ELIGIBLE EMPLOYEE** (non-merit benefits eligible), means an exempt employee who serves in an exempt benefits eligible position.
- M. **EXEMPT BENEFITS ELIGIBLE POSITION** (non-merit benefits eligible), means a position with scheduled work hours between 1,040 and 1,560 per calendar year.
- N. **EXEMPT EMPLOYEE** means an employee appointed to a position in the exempt service.
- O. **EXEMPT SERVICE** means positions specifically designated exempt under the Merit System Ordinance and Personnel Regulations.
- P. **EXEMPT TEMPORARY EMPLOYEE** means an exempt employee who serves in an exempt temporary position.
- Q. **EXEMPT TEMPORARY POSITION** means a position with scheduled work hours not exceeding 900 hours per calendar year.
- R. **MERIT EMPLOYEE** means an employee who serves in a merit position.
- S. **MERIT POSITION** means a position in the competitive service.
- T. **MERIT SYSTEM** means the system of personnel administration applicable to the competitive service. It is governed by the Merit System Ordinance, any applicable provisions of other County ordinances, Personnel Regulations, and all applicable and lawful personnel management directives of the Board of Supervisors, the County Executive, and Department of Human Resources Director.
- U. **MERIT SYSTEM ORDINANCE** means Article 1, Chapter 3, of the County Code.
- V. **PERSONNEL REGULATIONS** mean the Fairfax County Personnel Regulations.
- W. **SENIOR MANAGERS** mean all of the officials listed in appendix 1 to this procedural memorandum, unless stated otherwise herein.
- X. **EMPLOYEES OF APPOINTED AND ELECTED OFFICIALS** means all office staff of members of the Board of Supervisors, employees of constitutional officers subject to any agreements made in accordance with County Code §§ 3-1-1(c) and 3-1-2(b)(4), including but not limited to assistant registrars.
- Y. **VETERAN** means any person who has received an honorable discharge and has (i) provided more than 180 consecutive days of full-time, active duty service in the armed forces of the United States or reserve components thereof, including the National Guard, or (ii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

IV. CODES FOR POSITIONS IN THE EXEMPT SERVICE.

The Department of Human Resources shall assign the following Status Codes (Employee Groups) to the different categories of positions in the exempt service to facilitate processing of administrative matters relating to exempt employees:

Exempt Position Category	Status Code/Employee Group
Exempt Attached	D
Exempt Benefits Eligible	E
Exempt Temporary	G
Senior Managers	A, B
Employees of Appointed and Elected Officials	Varies

(The Department of Human Resources assigns merit employees to Status Code/Employee Group C.)

V. POLICIES FOR THE EXEMPT SERVICE.

A. Scope of Exempt Employee Rights and Benefits.

1. Rules governing merit system employees set forth in the County Code, Personnel Regulations, procedural memoranda, and other authorities are inapplicable to exempt service employees, unless one or more of the following provides otherwise:
 - a. This procedural memorandum;
 - b. An agreement made in accordance with County Code §§ 3-1-1-(c) and 3-1-(b)(4);
 - c. An employment contract;
 - d. An appointment resolution passed by the Board of Supervisors;
 - e. State law; or
 - f. The County Code.
2. Pursuant to County Code § 3-1-1(e)(3) and 3-1-1(c), the County Code sections, provisions of the Personnel Regulations, and procedural memoranda listed in appendix 2 to this procedural memorandum are applicable to exempt employees.
3. Senior managers have the same rights and benefits as merit employees, unless otherwise provided herein or by an employment contract or appointment resolution passed by the Board of Supervisors.
4. An exempt employee temporarily filling a merit position has only the rights and benefits due an exempt employee of his or her particular category.

B. Classification of Exempt Service Positions.

1. The Department of Human Resources shall classify all positions in the exempt service in the same manner it classifies positions in the competitive service under Chapter 3 of the Personnel Regulations.
2. When an exempt service position is reclassified, the incumbent exempt employee's class and grade are changed accordingly, and the exempt employee's salary in the new grade is determined by the rules that apply to merit employees when their positions are reclassified.

C. Appointment of Exempt Employees.

1. All appointments of exempt employees shall be based on the ability, training, and experience of the appointees, which are relevant to the work they are to perform.
 - a. The determination of the fitness of an exempt appointee is the responsibility of the appointing authority, as is ensuring that the process of filling positions in the exempt service under his or her authority conforms to all applicable laws, including but not limited to those requiring equal employment opportunities.
 - b. At the request of the appointing authority and with the concurrence of the Human Resources Director, the Department of Human Resources shall advertise, accept applications for, and assist the appointing authority in the screening and selection process when filling an exempt position.
2. Discrimination against applicants for positions in the exempt service based on race, color, creed, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, sexual orientation, gender identity, status as a veteran, or genetic information is prohibited.
3. An appointing authority shall take into consideration or give preference to the status of an applicant for a position in the exempt service as an honorably discharged veteran of the armed forces of the United States, provided such veteran meets all of the knowledge, skills, and eligibility requirements for the available position. Additional consideration shall be given to veterans who have a service-connected disability rating fixed by the United States Department of Veterans Affairs.
4. A retired merit employee may be hired as an exempt employee, subject to the applicable provisions of the County Code, Personnel Regulations, procedural memoranda, and Department of Human Resources policies.

D. Management of Exempt Employees.

1. An appointing authority is responsible for management of exempt employees subject to his or her authority, unless provided otherwise in this procedural memorandum.
2. Discrimination against exempt employees based on race, color, creed, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, sexual orientation, gender identity, status as a veteran, or genetic information is prohibited.
3. Exempt employees serve solely at the pleasure of their appointing authority. Accordingly, they have no right to participate in the grievance procedure provided by the Personnel Regulations.
4. Upon appointment, the salary for an exempt employee is determined by the appointing authority. The exempt employee's pay subsequently may be adjusted at the discretion of the appointing authority.
5. Exempt employees may be transferred from one position or class to another by their appointing authority.

E. Exempt Employees' Pay and Benefits.

1. An exempt benefits eligible employee is eligible for the following County employee benefits and compensation:
 - a. Health, dental and vision insurance, and flexible spending accounts;
 - b. Overtime or compensatory time, call back pay, on-call and consecutive shift pay in accordance with Chapter 4 of the Personnel Regulations, and administrative leave when serving as an election worker; and
 - c. Administrative leave, as outlined in Chapter 10, at the discretion of his or her appointing authority.
2. An exempt temporary employee is eligible for the following County compensation:
 - a. Overtime or compensatory time, call back pay, on-call and consecutive shift pay in accordance with Chapter 4 of the Personnel Regulations, administrative leave when serving as an election worker; and
 - b. Administrative leave, as outlined in Chapter 10, at the discretion of his or her appointing authority.

3. A senior manager is eligible for the same County employee benefits as merit employees, except as provided herein, or in an employment contract or appointment resolution passed by the Board of Supervisors.
 - a. A senior manager is ineligible to earn or accrue compensatory leave.
 - b. A senior manager shall accrue 26 days (208 hours) of annual leave and 13 days (104 hours) of sick leave each year, regardless of the length of his or her County service.
 - i. This annual and sick leave shall be added to the senior manager's annual and sick leave balances respectively at the beginning of each calendar year.
 - ii. A newly appointed senior manager shall receive prorated leave balances based upon the number of pay periods remaining in the calendar year of his or her appointment.
 - c. A senior manager is not required to record his or her time and attendance on an incremental basis, with the exception of leave for absences of one workday or more.
4. An employee of an elected or appointed official, is eligible for the same County benefits as merit employees, except as provided herein, or in an agreement made in accordance with County Code §§ 3-1-1-(c) and 3-1-2(b)(4) or by the employee's employment arrangement with the official who is his or her appointing authority.
 - a. The employee may receive shift differential pay, holiday leave, overtime or compensatory time, or call back pay at the discretion of the elected official.
 - b. The employee has the option of participating in the appropriate retirement system.

F. Eligibility for the Competitive Service.

1. An exempt employee only can become a member of the competitive service when appointed to a merit position as a result of the competitive selection process provided for the merit system set forth in the Personnel Regulations. This rule applies even when an exempt employee is in an exempt position converted to a merit position.
2. Exempt employees may apply for positions in the competitive service listed as promotional opportunities open only to County employees.

3. If an exempt employee competes for and is appointed to a position in the competitive service, his or her initial grade and salary in the merit position shall be determined as specified in Chapter 4 of the Personnel Regulations.
 - a. The employee's appointment date shall be the date of merit appointment.
 - b. Exempt service is not counted in computing seniority under the procedures for effecting a reduction-in-force under Chapter Nine (9) of the Personnel Regulations.

G. Holding Multiple Positions (Concurrent Employment).

1. An employee may hold up to three positions with the County concurrently, provided the following conditions are met:
 - a. A current County employee who wants to serve simultaneously in multiple positions, may do so only if he or she receives approval from his or her current supervisor(s), and complies with the outside employment requirements outlined in Chapter 4 of the Personnel Regulations.
 - b. The positions held must be of the same Fair Labor Standards Act (FLSA) eligibility status, either FLSA exempt or FLSA non-exempt.
 - c. The positions held must have like work periods – either 7-day, 14-day or 28-day.
2. Employees holding multiple exempt positions must also abide by the following limitations on the number of hours worked in a calendar year.
 - a. Employees holding multiple exempt benefits eligible positions must work a combined total of no less than 1,040 hours and no more than 1,560 hours. Once the maximum hours threshold is reached, the employee will not be eligible to work again in an exempt benefits eligible or exempt temporary position until the beginning of the next calendar year, and must be terminated in FOCUS.
 - b. Employees holding multiple exempt temporary positions may work a combined total of no more than 900 hours. Once the maximum hours threshold is reached, the employee will not be eligible to work again in an exempt benefits eligible or exempt temporary position until the beginning of the next calendar year, and must be terminated in FOCUS.
 - c. Employees holding a combination of exempt temporary and exempt benefits eligible positions must work a combined total of no less than 1,040 hours and no more than 1,560 hours. Once the maximum hours threshold is reached, the employee will not be eligible to work again in an exempt benefits eligible or

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exempt temporary position until the beginning of the next calendar year, and must be terminated in FOCUS.

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APPENDIX 1
Senior Managers

Directors of the following agencies, departments, or offices (personnel areas):

Animal Sheltering	Neighborhood and Community Services
Cable and Consumer Services	Prevent and End Homelessness
Clerk Services	Park Authority
Code Compliance	Planning and Development
Economic Initiatives	Police
Emergency Management	Independent Police Auditor
Environmental & Energy Coordination	Procurement and Material Management
Facilities Management	Public Affairs
Family Services	Public Works and Environmental Services
Finance	Public Safety Communications
Fire and Rescue	Strategy Management
Health	Tax Administration
Housing and Community Development	Transportation
Human Resources	Vehicle Services
Human Rights and Equity Programs	
Information Technology	
Internal Audit	
Juvenile and Domestic Relations District Court	
Land Development Services	
Library	
Management and Budget	

Directors of the following authorities, functions, or entities:

Economic Development Authority	Public Safety and Transportation Operations Center (General Manager)
Financial and Programs Auditor	

Executive Directors to the following boards, commissions, and organizations:

Civil Service Commission	Planning Commission
Fairfax-Falls Church Community Services Board	Reston Community Center
McLean Community Center	Retirement Boards

Additional appointed officials:

Assistant County Executive	County Executive
Chief Financial Officer	Deputy County Executive
County Attorney	Executive Assistant to the County Executive
	General Registrar

APPENDIX 2
Fairfax County Code, Personnel Regulations
And Procedural Memoranda Applicable to Exempt Service

The application of the following Fairfax County Code sections, and Fairfax County Government Personnel Regulations and Procedural Memoranda varies according to an exempt employee's status/group (attached, benefits eligible, temporary, senior manager, or employee of an elected or appointed official). Specific application is itemized in the following four charts. Eligible exempt employees are subject to the specific terms, conditions and requirements outlined in the code, regulation or procedural memoranda based on job function and classification, and FLSA status.

A. Fairfax County Code Sections Pertaining to Employment

Section(s)	Subject(s)	Exempt Status/ Employee Group
3-1-19	Protection of Legitimate Political Activity of Employees	All
3-1-21	Prohibited Practices	All
3-1-22 (b-c)	Penalties for Violation of Article and Personnel Regulations	All
3-1-23 (a-d)	Criminal History Record Check and Fingerprinting; Appointment to Sensitive Positions	All
3-1-24	Right of Employees to Contact Elected Officials	All
3-5-2.1 (b-c)	Disclosure of Financial Interest	All
3-9-1 to 3-9-4	Restrictions on Activities of Former Officers and Employees	All

B. Fairfax County Personnel Regulations

Provision	Subject	Exempt Status/ Employee Group
§§ 1.2-2 and 1.2-3	Scope of Fairfax County Merit System Ordinance and Personnel Regulations	All
Ch. 2	Definitions	All
§ 4.15	Overtime, Compensatory Time, Call-Back Time, Consecutive Shift Time	All (based on FLSA status and job classification; at the discretion of the appointing authority for BOS staff)
§ 4.16-4	Outside Employment and Conflict of Interest	All
§ 5.5	Investigations and Fingerprinting	All

§ 5.6	Medical Examinations	All (based on job classification)
§ 7.7	Appointment of Family Members	All
§ 9.4-2 and 5	Lay-Offs	Benefits eligible and temporary
§ 10.5	Unauthorized Absence	All
§ 10.22	Family and Medical Leave ¹ Under	All
§ 10.26	Compensatory Leave	Attached, Benefits Eligible, Temporary, and Employees of Elected and Appointed Officials, and for BOS staff, at the discretion of the appointing authority
§ 10.29 (except 10.29-2); 10.37	Military Leave, Administrative Leave	All
Chapter 10	Annual leave, sick leave, extraordinary sick leave, parental leave paid family leave, leave for injury in line of duty, bereavement leave, volunteer activity leave, education leave, leave without pay, civil leave, holiday leave	Exempt employees of Elected and Appointed Officials and Senior Managers
§ 14.5	Employee Medical Records	All
Add. No. 1 to Ch. 16	Standards of Conduct	All
Add.No. 2 to Ch. 16	Code of Ethics for the Merit Service of Fairfax County, Virginia	All

Commented [AJ3]: Removed parental leave and replaced with paid family leave.

¹ Leave use options for an employee in the exempt service under FMLA are limited to such leave as is available to the employee, based on his/her current employment status.

C. Fairfax County Procedural Memoranda

Number	Subject	Exempt Status/ Employee Group
02-08	Fairfax County's Language Access Policy	All
02-09	HIPPA Compliance	All
06-01	Workplace Violence Procedural Guidelines	All
11-01	Exempt Service	All
11-02	Financial Disclosure	All
70-04	Use of County Electronic Communications Services (Internet, Electronic Mail, Phonemail, and FAX, PDA)	All
02-10	Alternative Dispute Resolution	All
08-04	Alcoholic Beverages	All
25-27	Smoking Policy	All
08-03	Holiday Decorations	All
06-03	Travel Policies and Procedures	All
06-04	Use of Cellular Phones and Other Communication Equipment While Operating County Vehicles	All
06-05	Identity Theft Prevention Program Policies and Procedures	All
70-05	Information Security	All
02-04	Fraud Policy	All
12-16	Online Procurement of Office Supplies	All
10-04	Motor Pool	All
12-14	Separation of Duties	All
13-03	Endorsements or Recommendation of Products and Services by County Officials or Employees	All
12-09	Procedures for Using Small Purchase Orders	All
39-02	Employment Policies Relating to Pregnancy and Childbirth	All
39-03	Policy and Procedure for the Religious Accommodation Process in Employment	All
39-04	Policy and Procedure for Reasonable Accommodation Process in Employment	All
39-05	Policy and Procedure for Reasonable Accommodation of Services and Devices	All
39-06	Policy and Procedure on Discrimination, Harassment, and Retaliation	All
39-07	Equal Employment Opportunity Reporting Requirements	All

Commented [AJ4]: Removed as incorporated into PM 70-05.

D. Fairfax County Personnel/Payroll Administration Policies and Procedures

Number	Subject	Exempt Status/ Employee Group
3	Advanced/Extraordinary Sick Leave	All (except Benefits Eligible and Temporary employees)
4	Underfill Assignments and Related Personnel Actions (non-public safety)	All
4A	Underfill Assignments and Related Personnel Actions (public safety)	All
8	Time and Attendance System and Controls	All
12	Medical Donor Program	All
13	Time and Attendance Reporting for All Employees Except 24-Hour Shift Fire Protection Personnel and Law Enforcement Personnel	All
14A	Time and Attendance Reporting for 24-Hour Shift Fire Protection Personnel as Defined in Personnel Regulations 2.28a	All
14B	Time and Attendance Reporting for Law Enforcement Personnel as Defined in Personnel Regulation 2.30a	All
15	Employee Identification Card	All
17	Military Leave	All
23	Injury Leave	All (with Benefits Eligible and Temporary employees subject to §3.3.5)
28	Dealing with Impaired Employees Suspected of Alcohol/Drug Use	All
29	Employee Eligibility Verification	All
30	Assisting Employees with Serious Chronic Illnesses	All
31	Leave for Inclement Weather or Other Emergencies	All (subject to conditions therein)
33	Employee Clearance Record	All
35	Commercial Motor Vehicle Safety Act of 1986	All
36	Leave Transfer	All (except Benefits Eligible and Temporary employees; transferred leave for military duty applies to merit employees only)

37	Employee Civic Activities and Responsibilities	All (rules governing leave do not apply to Benefits Eligible and Temporary employees)
41	Applicant/Employee Medical Examinations – Non-Public Safety	All
42	Procedures for Applicant Background Investigations	All (subject to conditions therein)
43A	Family and Medical Leave ^{1,2}	All
43B	Military Family and Medical Leave (MFML) ¹	All
48	Reemployed Annuitants	All
49	On-Call Compensation	Attached, Benefits Eligible, Temporary, and Employees of Elected or Appointed Officials
50	Computer Usage	All
51	Overtime Compensation	Attached, Benefits Eligible, Temporary, and Employees of Elected or Appointed Officials
52	Foreign Language Skills Compensation	All
53	Fitness for Duty Examinations	All
56	Credit Check Requirements for Positions of Trust	All (subject to conditions therein)

Commented [AJ5]: Removed as incorporated into PM 70-05.

¹ Leave use options for an employee in the exempt service under FMLA are limited to such leave as is available to the employee, based on his/her current employment status.

² For purposes of FMLA administration, “key employees” include all directors of agencies, departments, and offices, as outlined in appendix 1 of this memorandum. Under some circumstances, key employees are not guaranteed reinstatement provided to other employees under the Act.

62	Telework	All
63	Paid Family Leave	All

Commented [AJ6]: Added new PPAPP 63 Paid Family Leave

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ACTION - 2

Approval of Revisions to Chapters 4 and 10 of the Personnel Regulations to Temporarily Increase the Number of Hours of Compensatory Time That Can Be Carried Over at the End of 2020 and 2021, and to Clarify When the 12-Month Period Commences for the Use of Paid Family Leave for Birth and Adoption/Foster Care Placements

ISSUE:

Revisions to the Fairfax County Personnel Regulations are proposed to provide administrative direction and policy clarification.

RECOMMENDATION:

The County Executive recommends the Board of Supervisors approve the proposed revisions to Chapters 4 and 10 of the Personnel Regulations, as specified below.

TIMING:

Board action is requested on November 17, 2020. The revisions to Chapter 4 are effective immediately while revisions to Chapter 10 are retroactive to the date Paid Family Leave took effect, October 10, 2020.

BACKGROUND:

Revisions to Chapter 4 of the Personnel Regulations are required to temporarily increase the number of hours of compensatory time that may be carried over at the end of 2020 and 2021 due to the pandemic. Currently, employees may only carry forward 240 hours of compensatory time from one calendar year to the next and compensatory time in excess of 240 hours is forfeited at the end of the calendar year. In April 2020 the County Executive communicated through Countywide email to all County employees that for the years ending in 2020 and 2021, County employees eligible to earn compensatory time but unable to use it due to the pandemic would be allowed to carry over up to 480 hours.

Revisions to Chapter 10 of the Personnel Regulations are required to clarify when the 12-month period commences for use of Paid Family Leave (PFL) applicable to birth or placements for adoption/foster care. The revision is to ensure consistency in the administration of PFL with the Family Medical Leave Act of 1993 (Act). Under the Act,

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the 12-month period for birth and adoption/foster placements is established on the date the event occurs, which is how Parental Leave is currently administered in the County. The FML 12-month period for other than birth or placements for foster care/adoption is based on the first date of leave use. This revision will allow the County to align PFL with the Act.

Following an advertised public hearing held on October 8, 2020, the Civil Service Commission considered the below referenced proposed revisions to the Personnel Regulations. The Office of the County Attorney reviewed all proposed revisions. At the hearing, the Department of Human Resources gave an overview of the proposed revisions for each chapter. Michelle Starr, of the Service Employees International Union registered to speak in advance of the hearing. Ms. Starr expressed that she had no objections to the proposed changes. No additional public comment was provided.

The following content highlights proposed changes, by chapter:

Chapter 4 – Pay Plan, Hours of Work and Overtime (Attachment 1)

Added language and effective dates to Section 4.14-4b to temporarily increase the number of hours of Compensatory Time that may be carried over at the end of 2020 and 2021 from 240 hours to 480 hours.

Chapter 10 – Leave (Attachment 2)

Added clarifying language regarding Paid Family Leave applicable to birth or placements for adoption/foster care to Section 10.23-4 so that it is consistent with the Family Medical Leave Act of 1993 and Section 10.22-1.

In accordance with the Merit System Ordinance, the proposed revisions were forwarded to the Civil Service Commission for public hearing. The public hearing was held on October 8, 2020, and the Commission's comments are included as Attachment Three (3).

FISCAL IMPACT:

None noted.

ENCLOSED DOCUMENTS:

Attachment 1: Proposed Revisions to Chapter 4 of the Personnel Regulations
Attachment 2: Proposed Revisions to Chapter 10 of the Personnel Regulations
Attachment 3: Civil Service Commissioners' Memorandum

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STAFF:

Catherine Spage, Director, Department of Human Resources

ASSIGNED COUNSEL:

Karen Gibbons, Deputy County Attorney

CHAPTER 4

Pay Plan, Hours of Work and Overtime

4.1 Pay Ranges

- 1 In preparing the pay plan, consideration shall be given to the duties and responsibilities of the various types of positions, the prevailing rates paid for comparable services in public and private employment and to experience in recruiting for such positions. Pay ranges shall include a minimum rate, a midpoint rate and a maximum rate for each class. Pay ranges assigned to classes consisting of public safety employees shall include such intermediate rates or steps as deemed necessary.
- 2 The rate of pay set forth in the plan shall include total pay in every form, except that it shall not include allowance for actual and necessary travel expense authorized and included as incident to employment. If subsistence, quarters or other maintenance is furnished to an employee, the reasonable value thereof shall be deducted from the rate of pay set forth in the plan. Exceptions to this provision must be approved by the Board of Supervisors.
- 3 When, in the opinion of the department head or deputy, following these rules results in an inequity, the Human Resources Director may authorize a salary adjustment if he /she concurs in the opinion of the department head or deputy.
- 4 Except as provided in these rules, performance pay increase dates shall not be affected by the adoption of the new pay plan.
- 5 Employee pay increases, to include performance pay increases and/or longevity increases, as provided in this chapter are subject to conditions outlined in the appropriate section of the regulations and are subject to available funding.

4.2 Starting Rate of Pay

- 1 The minimum rate of pay for a class shall normally be paid upon appointment.
- 2 Original appointment not to exceed the midpoint rate may be made if any of the following conditions exist:
 - a. The qualifications of the applicant significantly exceed the requirements for the class.
 - b. Difficulty of recruitment requires payment of a higher rate.

- 3 Original appointment above the midpoint rate requires the approval of the Human Resources Director.
- 4 A former employee being reinstated, as defined in Chapter 2, will be appointed at a rate of pay equal to or greater than the rate he/she was receiving at the time of his/her separation, adjusted to reflect any cost of living or market pay adjustments pay to that pay grade since his/her separation.

4.3 Performance Pay Increase

- 1 Performance pay increases may be granted to those employees who meet the requirements specified for such increases. Employees considered not qualified for a performance pay increase shall be handled in accordance with the provisions of Chapter 12.
- 2 Eligibility

A non-public safety employee receiving less than the maximum scheduled rate for his/her grade may be granted a percentage salary increase not to exceed the amount authorized by the Board of Supervisors. A performance pay increase for a public safety employee advances him/her to the next step in the grade. Eligibility for performance pay increases is subject to available funding and the following:

- a. His/her work has met or exceeded the performance requirements established by his/her department head or designee to qualify for a pay increase. Public safety employees' performance must exceed the minimum performance standards to qualify for a performance pay increase. Effective August 1, 1990 employees who enlist, or are inducted into military service, or who are members of a reserve component of the armed forces of the United States who are ordered to active duty and return to County employment; upon their release from active duty and whose service is other than dishonorable shall be deemed to have satisfied this requirement for the period they are on active duty. The total length of active military service may not exceed five years.
- b. A performance review period is 12 months.

Notwithstanding the merit review periods listed above, effective July 13, 1991, the beginning of the first full pay period in FY 1992, all employees who have merit increment dates shall have their merit increment date extended by one year.

Thus, for example, an employee who had a merit increment date of the first day of payroll number 15 in 1991, which falls on July 13, 1991, would have a new increment date of the first day of payroll number 15 in 1992. An employee who had a merit increment date of the first day of payroll number 15 in 1992, which

falls on July 11, 1992, would have a new merit increment date of the first day of payroll number 15 in 1993, which falls on July 10, 1993. An employee who had a merit increment date of the first day of payroll number 15 in 1993, which falls on July 10, 1993, would have a new merit increment date of the first day of payroll number 15 in 1994, which falls on July 9, 1994.

Notwithstanding the merit review periods listed above, effective July 11, 1992, the beginning of the first full pay period in FY 1993, all employees who have merit increment dates shall have their merit increment date extended by one year. Thus, for example, an employee who had a merit increment date of the first day of payroll number 15 in 1992 which falls on July 11, 1992, would have a new merit increment date of the first day of payroll number 15 in 1993, which falls on July 10, 1993. An employee who had a merit increment date of the first day of payroll number 15 in 1993 which falls on July 10, 1993, would have a new merit increment date of the first day of payroll number 15 in 1994 which falls on July 9, 1994. An employee who had a merit increment date of the first day of payroll number 15 in 1994, which falls on July 9, 1994, would have a new merit increment date of the first day of payroll number 15 in 1995, which falls on July 8, 1995.

- 3 Each employee shall have a performance pay increase date established when he/she is initially appointed to a merit position.
 - a. For uniformed public service employees, that date corresponds to the beginning of the pay period in which he/she is appointed or promoted
 - b. Performance pay increase date for other employees corresponds with the first full pay period of the fiscal year. Partial pay periods do not count towards the performance pay increase date and initial probationary employees must be hired prior to April 1 to be eligible to receive performance increases in the given year.

- 4 Creditable service in the completion of performance review periods includes:
 - a. Continuous employment in the competitive service not including overtime.
 - b. Period of involuntary separation initiated by the department head followed by reinstatement after appeal by the Civil Service Commission under the grievance procedure, for which the Commission determines that the employee is entitled to back pay.
 - c. Honorable service with the armed forces by employees who enlist or are inducted into military service or who are members of a reserve component of the United States who are ordered to active duty and who return to County employment upon their release from active duty. The total length of active military service, which can be credited, may not exceed five years.

4.4 Outstanding Performance Award

- 1 An employee who has completed their initial probationary period and performs the duties and responsibilities of his/her position in an outstanding manner and whose work generally is well above expectations shall be eligible to be considered for an outstanding performance award.
- 2 An outstanding performance award may be recommended by a department head or designee. Such outstanding performance award recommendation shall be in writing, shall state the reason for such recommendation and shall be submitted through the Deputy County Executive to the Human Resources Director, as appropriate, for implementation.
- 3 Outstanding performance awards may be granted in any dollar amount not to exceed \$1,000 the amount authorized by the Board of Supervisors.

4.5 Longevity Pay Increments

Public Safety employees shall receive a longevity increment increase after 15 years of service and reaching top step in grade. A second longevity increase is awarded after 20 years of service and reaching top step in grade (step 9).

Non-public safety employees may be eligible to receive longevity increases, in lieu of performance increases, after 20 and 25 years of service. These increases are awarded to employees who attain the required length of service before July 1 of the year funded.

4.6 Within-Grade Adjustment

When in the opinion of the County Executive, it is in the best interest of the County to do so, he/she may authorize a salary adjustment to encourage retention of highly qualified County employees and address pay inequities not to exceed the maximum rate of pay assigned to the employee's class.

4.7 Pay Rate in Promotion, Demotion, Reallocation of Position or Transfer - Except Public Safety Employees

If an employee other than a public safety employee is promoted, demoted, appointed to a reallocated position or transferred, his/her rate of pay for the new position shall be determined as follows:

- 1 When a position is filled by promotion, the appointee shall receive a salary increase equal to 10% for one and two-grade promotions and 15% for promotions of three or more grades not to exceed the maximum rate of pay assigned to the new job class or the minimum rate of pay for the new job class whichever is greater.

- 2 With the exception of disciplinary demotions or demotions during a promotional probationary period, when an employee is demoted, he/she shall be placed at the same salary in the new pay grade. If the employee's salary is greater than the maximum salary of the new pay grade, he/she shall be placed at the maximum salary for the new pay grade.

When an employee is promoted or reinstated to his or her former job class within a year from the date of demotion, he or she shall remain at the same salary or be placed at the salary he or she was receiving prior to the demotion, whichever is greater.

- 3 When an employee is demoted for disciplinary reasons, he or she shall be placed at the salary in the new grade that is 5% less than his/her current salary not to exceed the maximum salary for the pay grade.
- 4 When an employee is demoted during a promotional probationary period, the employee's former rate of pay shall be reinstated in the new lower pay grade, not to exceed the maximum salary for the pay grade.
- 5 When an employee is transferred from a position of one class to a position of another class at the same level, he/she shall continue to be paid at the same rate of pay.
- 6 Upon upward reclassification of a position, the incumbent shall receive a pay increase equal to 5% of the midpoint of the salary range for the new, higher pay job class or move to the minimum of the new range, whichever is greater not to exceed the maximum rate of pay for the new pay grade.
- 7 Upon review of a job class to determine if a regrade is warranted, the incumbents in the job class may be entitled to a pay adjustment regardless of whether the job class is regraded or not. The determination of pay increase eligibility and the amount of such pay increase will be made in accordance with procedures approved by the County Executive and the Board of Supervisors. In no case shall the employee's salary be less than the minimum or greater than the maximum for the new pay range.

4.8 Pay Rate in Promotion, Demotion, Reallocation of Position or Transfer - Public Safety Employees

If a public safety employee is promoted, demoted, appointed to a reallocated position or transferred, his/her rate of pay for the new position shall be determined as follows:

- 1 When a position is filled by promotion, except as noted elsewhere in this chapter, the appointee shall receive the greater amount of the minimum rate for the class of the new position or an amount in excess of one normal within grade increase in the pay grade of the class of the position held prior to promotion. Such increase shall not be less than 5% and if the promotion is three grades or more, the employee shall be placed in the new

grade at a step closest to their identified years of service threshold. The appointee shall receive a new performance pay increase date, which shall be calculated from the payroll number and year of his/her promotion.

- 2 When an employee is demoted, he/she shall be placed in the pay step in the new pay grade, which represents the closest dollar amount that is less than the former pay. An employee may be placed in a longevity step under this provision only if the employee meets the length of service requirement for that step. The performance pay increase date shall not change.

When an employee is promoted or reinstated to his or her former job class within a year from the date of demotion, he or she shall remain at the same salary or be placed at the salary he or she was receiving prior to the demotion, whichever is greater and the performance pay increase date shall not change.

- 3 When an employee is demoted to his or her former job class during a promotional probationary period, the employee's former grade and step shall be reinstated. When an employee is demoted to a job class other than that in which he/she was serving at the time of promotion, he/she shall be placed at the step in the lower grade that is closest to, but not less than the employee was making prior to promotion. If the employee's pre-promotion performance pay increase (PPI) date falls between the date of promotion and the date of the subsequent demotion, the promotion date will be retained as the PPI date; otherwise the pre-promotion PPI date shall be reinstated.

- 4 When an employee is transferred from a position of one class to a position of another class at the same level, he/she shall continue to be paid at the same rate of pay.

- 5 Upon upward reclassification/reallocation of a position, the incumbent shall receive the greater amount of either the minimum rate for the new grade or the next higher dollar rate in the new pay grade as compared to the dollar rate in the lower grade except in the following instances:

- a. Employees who have served one year or more in a two-year review period and who upon reclassification/reallocation, move to a step with a one year review period, shall receive an additional step upon reclassification/ reallocation to the new grade. The employee shall receive a new performance pay increase date, which shall be calculated from the payroll number and year of the reclassification/reallocation using the performance review period for the new step.
- b. Except as noted above, the performance pay increase date shall not change unless the reclassification/reallocation moves the employee to a step with a shorter review period. In such cases, the year of the performance pay increase date is

reduced if the time between the effective date of the reclassification/reallocation action and the employee's performance pay increase date is more than one year.

4.9 Pay Rate in Promotion, Demotion, Reallocation of Position or Transfer - Police Officers, Deputy Sheriffs and Animal Protection Police Officers

- 1 A Police Officer I promoted to Police Officer II, a Deputy Sheriff I promoted to Deputy Sheriff II, or an Animal Protection Police Officer shall receive an increase in pay not to exceed one within grade increase and the performance pay increase date will not change.
- 2 A Police Officer II or Deputy Sheriff II who is receiving a proficiency pay adjustment and is promoted to Police Sergeant or Deputy Sheriff Sergeant respectively, shall receive an increase in pay not to exceed one within grade increase and the performance pay increase date will not change.
- 3 In all other cases, the normal rules affecting promotion, demotion, reallocation of positions, and transfer for public safety employees shall apply.

4.10 Allowances Granted Police Officers

- 1 Police Officers required to wear civilian clothes while on duty shall be granted a clothing allowance while such assignment lasts.

4.11 Allowances Granted Deputy Sheriffs

- 1 A Deputy Sheriff II who has a minimum of five (5) years of service as a sworn Deputy Sheriff with Fairfax County and who is certified by the Sheriff or designee as demonstrating exemplary expertise in an authorized Deputy Sheriff position, may be eligible to receive a proficiency pay adjustment and assume the work title of "Master Deputy Sheriff".
 - a. A Deputy Sheriff who is eligible for a proficiency pay adjustment shall be reassigned to pay grade C-19 and shall receive an increase in pay not to exceed one within grade increase and the performance pay increase date will not change.
 - b. The number of Deputy Sheriff II's receiving a proficiency pay adjustment shall at no time be greater than one-third of the total number of authorized and established Deputy Sheriff II positions.

4.12 Allowances Granted Uniformed Fire Employees

- 1 A Fire Technician who has a minimum of five (5) years of service as a uniformed Fire employee with Fairfax County, and who is certified by the Chief of Fire and Rescue or designee as demonstrating exemplary expertise in an authorized Fire Technician specialty, may be eligible to receive a fire proficiency pay adjustment and assume the work title of "Master Firefighter."
 - a. A Fire Technician who is eligible for a fire proficiency pay adjustment shall be reassigned to pay grade F-20 and shall receive an increase in pay not to exceed one within grade increase, and the performance pay increase date will not change.
 - b. The number of Fire Technicians receiving a fire proficiency pay adjustment shall at no time be greater than one-third of the total number of authorized and established Fire Technician positions.

4.13 Hours of Work

- 1 The regular work period for all full-time County employees, excluding law enforcement and fire protection personnel, shall be 40 hours worked or on paid leave (excluding meal periods) within a seven consecutive calendar day period beginning and ending as defined in Chapter 2. The schedule of hours for the workweek shall be determined by the department head or designee.
- 2 The regular work period for fire protection personnel shall be 28 consecutive calendar days, beginning and ending as defined in Chapter 2. The number of hours worked during the 28-day work period may vary depending on shift schedules and department needs.
- 3 The regular work period for law enforcement personnel shall be 14 consecutive calendar days, beginning and ending as defined in Chapter 2. The number of hours worked during the 14-day work period may vary depending on shift schedules and department needs.
- 4 The County Executive may authorize the inclusion of the meal period as actual work for shift positions.
- 5 All employees in the Merit System shall be entitled to a 15-minute rest period for each four hours of assigned work, during a duty day, as scheduled by the department head or designee. Whenever possible, the rest period shall be scheduled at the middle of each such four-hour period of work.
- 6 Shift Differential Premium Pay shall be authorized for all merit employees who are scheduled to work on fixed and/or rotating shifts that start at or after 1:00 P.M. wherein the hours scheduled on a shift after 4:00 P.M. are greater than the hours

scheduled prior to 4:00 P.M., excluding employees who work flex-time schedules. If an employee whose regular shift schedule qualifies him/her for shift differential premium pay, reports to work prior to the start of their regular shift hours, he/she remains eligible for shift differential premium pay for all hours worked after 1:00 P.M. regardless of the time he/she actually begins working on that day. The hours worked before the beginning of the regular shift schedule are not eligible for shift differential.

- 7 The Evening Shift shall encompass all shift schedules, which begin between the hours of 1:00 P.M. and 7:59 P.M. The premium pay rate established for the Evening Shift shall apply for all regularly scheduled hours actually worked between 1:00 P.M. and 7:59 P.M.
- 8 The Night Shift shall encompass all shift schedules, which begin at 8:00 P.M. and thereafter. The premium pay rate established for the Night Shift shall apply for all regularly scheduled hours actually worked between 8:00 P.M. and 6:59 A.M.
- 9 Employees assigned to 24-Hour Shift Schedules shall be paid Shift Differential Premium Pay for all regularly scheduled hours actually worked between the hours of 4:00 P.M. and 7:00 A.M. and in accordance with established payroll procedures.
- 10 Employees are paid and earn leave based on data recorded in official time and attendance records. An "online" timesheet is used to document time worked and leave taken. There are two types of time and attendance reporting:
 - a. Employees required to use positive time reporting must record all absences and hours worked each pay period.
 - b. Employees required to use negative time reporting only record exceptions to their scheduled work hours. If no exceptions are entered, the employee is paid a biweekly amount based on their scheduled hours.

4.14 Overtime, Compensatory Time, Call-Back Time, Consecutive Shift Time

- 1 Overtime.

FLSA overtime shall include all hours worked or on paid leave by an FLSA eligible employee (other than law enforcement and fire protection personnel) in excess of 40 hours in a work week.

Overtime for FLSA eligible law enforcement personnel (excluding sworn Police Officers, Animal Protection Police Officers, and Deputy Sheriffs scheduled to work a 40-hour week) shall include all hours worked or on paid leave in excess of 86 hours in a 14-day work period. Overtime for FLSA eligible law enforcement personnel in the Police Department and Deputy Sheriffs scheduled to work a 40-hour week shall include all hours worked or on paid leave in excess of 80 hours in a 14-day work period. Overtime

for FLSA eligible fire protection personnel shall include all hours worked or on paid leave in excess of 212 hours in a 28-day work period. Non-FLSA overtime includes hours worked in excess of the employee's scheduled hours but less than the eligibility requirement for FLSA overtime. Overtime shall be kept to a minimum and shall be used to relieve occasional excessive workloads or emergencies, and not to provide for constant recurring requirements. Overtime may be mandated when related to the health, welfare or safety of either the public or employees. Except in emergency situations, all overtime worked by an employee shall be approved by the employee's supervisor or designee, verbally or in writing prior to the overtime being worked. Employees shall not work in excess of authorized scheduled hours without express approval of the supervisor.

-2 Eligibility.

Employees shall earn compensatory time or be paid for overtime hours actually worked in accordance with the following provisions:

- a. FLSA eligible employees excluding law enforcement and fire protection personnel as defined in Chapter 2:
 - (1) shall be compensated at one and one-half times their regular rate of pay for all eligible hours worked or on paid leave in excess of 40 hours during the designated seven consecutive day work period. If requested by the employee and approved by the department head or designee, compensatory time at the rate of time and a half may be awarded in lieu of overtime pay. If the employee's compensatory leave balance is 240 hours or greater, overtime pay at one and one-half times the regular rate of pay must be awarded.
 - (2) shall earn straight compensatory time or be paid overtime at their hourly rate of pay, at the employee's discretion, for hours worked in excess of their scheduled hours wherein the time actually worked is less than forty hours in a seven day work period. If the employee's compensatory leave balance is 240 hours or greater, overtime pay at the hourly rate of pay must be awarded.
- b. Straight pay eligible employees shall, at the discretion of the department head or designee, earn straight compensatory time or be compensated at their hourly rate of pay for all time worked in excess of their scheduled work hours.
- c. Compensatory time eligible employees shall earn straight compensatory time for time worked in excess of their scheduled work hours.
- d. FLSA eligible fire protection personnel:

- (1) shall be compensated at one and one-half times their regular rate of pay for all eligible hours worked or on paid leave in excess of 212 hours during the 28 consecutive day work period. If requested by the employee and approved by department head or designee, compensatory time at the rate of time and a half may be awarded in lieu of overtime pay. If the employee's compensatory leave balance is 336 hours or greater, overtime pay at one and one-half times the regular rate of pay must be awarded.
- (2) shall earn straight compensatory time or be paid overtime at their hourly rate of pay, at the employee's discretion, for hours worked in excess of their scheduled hours wherein the hours actually worked are less than 212 hours in a 28 day work period. If the employee's compensatory leave balance is 336 hours or greater, overtime pay at the hourly rate of pay must be awarded.

All other Fire and Rescue Department employees shall be treated as described in Section 4.15 - 2a, b, or c.

e. FLSA eligible law enforcement personnel:

- (1) shall be compensated at one and one-half times their regular rate of pay for all hours worked or on paid leave in excess of 86 hours (80 hours for sworn Police Officers and Deputy Sheriffs scheduled to work a 40 hour week) during the 14 consecutive day work period. If requested by the employee and approved by the department head or designee, compensatory time at the rate of time and a half may be awarded in lieu of overtime pay. If the employee's compensatory leave balance is 240 hours or greater, overtime pay at one and one-half times the regular rate of pay must be awarded.
- (2) shall earn straight compensatory time or be paid overtime at their hourly rate of pay, at the employee's discretion, for hours worked in excess of their scheduled hours wherein the hours actually worked are less than 86 hours (80 hours for sworn Police Officers and Deputy Sheriffs scheduled to work a 40 hour week) in a 14 day work period. If the employee's compensatory leave balance is 240 hours or greater, overtime pay at the hourly rate of pay must be awarded.
- (3) shall be compensated at one and one-half times their hourly rate of pay for actual court time worked when such court time falls on the employee's scheduled day off or begins more than two hours prior to the employee's scheduled shift, regardless of the number of hours worked in a given work period.

All other public safety employees shall be treated as described in Section 4.15 - 2a, b, or c.

-3 Holiday/Emergency Administrative Leave.

Pro-rata adjustments shall be made for the holiday usage rate for shift schedules other than 40 hours per week to ensure compliance with the provisions of Chapter 10.

- a. Part-time merit employees shall be granted holiday time off with pay on a pro-rated basis regardless of the number of hours scheduled on the day on which a holiday falls computed at the rate of one-tenth of an hour times the employees bi-weekly scheduled hours.
- b. When an employee is required to work due to an emergency, staff shortage or hours worked that are a part of the regular work week on a holiday (actual or observed), the employee shall be compensated for the hours actually worked at the employee's hourly rate of pay or in accordance with the rules governing overtime, if applicable.

To receive holiday compensation on an actual holiday, an employee must be directed by his/her supervisor to work due to staff shortage or other operational necessity.

In addition, employees shall receive holiday compensation as follows:

- (1) FLSA eligible employees shall, at the employee's discretion, be granted holiday compensatory time or be paid holiday pay not exceeding the employee's regularly scheduled hours or one half of the employee's regularly scheduled hours for a half-day holiday. If the employee's compensatory leave balance is 240 hours or greater, holiday pay at the employee's hourly rate must be granted.
- (2) Straight pay eligible employees shall, at the discretion of the department head or designee, be granted holiday compensatory time or be paid holiday pay not exceeding the employee's regularly scheduled hours or one half of the employee's regularly scheduled hours for a half-day holiday) at the employee's hourly rate of pay.
- (3) Compensatory time eligible employees shall be granted holiday compensatory time not exceeding the employee's regularly scheduled hours or one half of the employee's regularly scheduled hours for a half-day holiday) at the employee's hourly rate of pay.

- c. When a holiday falls on an employee's scheduled day off, the employee shall be compensated as follows:
 - (1) FLSA eligible employees shall, at the employee's discretion, be granted holiday compensatory time or be paid holiday pay not exceeding eight hours (4 hours for a half-day holiday) at the employee's hourly rate of pay. If an employee's compensatory leave balance is 240 hours or greater, holiday pay at the employee's hourly rate must be granted.
 - (2) Straight pay eligible employees shall at the discretion of the department head or designee, be granted holiday compensatory time or be paid holiday pay not exceeding eight hours (4 hours for a half-day holiday) at the employee's hourly rate of pay.
 - (3) Compensatory time eligible employees shall be granted holiday compensatory time not exceeding eight hours (4 hours for a half-day holiday).
- d. When a holiday falls on an employee's scheduled workday and the employee does not work, the employee shall receive holiday pay at the employee's hourly rate of pay. Full-time merit employees (other than Fire and Rescue Department employees on the 24-hour shift schedule) who are scheduled to work more than 8 hours due to departmental operational needs (this does not include employees who elect to work a compressed work week or flex schedule), shall be granted holiday time off with pay up to the regularly scheduled hours for a full holiday (or one-half of the regularly scheduled hours for a half holiday).
- e. In the event of extreme inclement weather or other emergency, wherein the general County government is closed by the County Executive and all employees are granted Emergency Administrative Leave, those employees required to perform emergency services shall be compensated for the hours actually worked at the employee's hourly rate of pay or in accordance with the rules governing overtime. In addition, the employee shall be compensated as follows:
 - (1) FLSA eligible employees shall at the employee's discretion, be granted compensatory time or be paid at the employee's hourly rate of pay for the number of hours that coincide with the employee's work schedule for the day itself not to exceed the maximum amount granted by the County Executive. If the employee's compensatory leave balance is 240 hours (336 hours for fire protection personnel) or greater, the employee must be paid for these hours.
 - (2) Straight pay eligible employees shall, at the discretion of the department head or designee, be granted compensatory time or be paid at the

employee's hourly rate of pay for the number of hours that coincide with the employee's work schedule for the day itself not to exceed the maximum amount granted by the County Executive.

- (3) Compensatory time eligible employees shall be granted compensatory time for the number of hours that coincide with the employee's work schedule for the day itself not to exceed the maximum amount granted by the County Executive.

-4 Compensatory Time.

Compensatory time shall be earned and credited to an employee's records on the basis of actual hours worked in excess of the employee's scheduled hours. FLSA eligible employees who earn compensatory time for FLSA overtime hours worked (as defined 4.15 – 2 a(l), d(l), and e(l)) shall accrue 1 1/2 hours of compensatory time for each overtime hour worked.

All other compensatory time shall be accrued on an hour for hour basis. Compensatory time off for overtime worked shall be granted upon request of the employee, when approved by the department head or designee.

- a. In the event that an employee is granted compensatory time off in excess of the employee's accrued balance, the excess shall be charged against the employee's annual leave balance.
- b. Compensatory time not to exceed 240 hours may be carried forward from one calendar year to the next calendar year-with the exception that between December 31, 2020, and December 31, 2021, employees shall be eligible to carry forward up to 480 hours.
- c. County employees shall be awarded a terminal leave payment for any accrued compensatory time not to exceed a maximum of 240 hours (336 hours for fire protection personnel). This will be paid at the employee's current hourly rate of pay at the time of termination with the exception that FLSA eligible employees will be paid at the current regular rate or at the average regular rate for the last 3 years, whichever is greater.
- d. Notwithstanding the provisions of this section or any other provision of these personnel regulations or of the procedural directives governing the exempt service, effective July 1, 1998, senior managers shall not be eligible to earn or accrue compensatory leave. For purposes of this section, "senior managers" are noted in a procedural memorandum issued by the Human Resources Director.

Commented [A1]: Added language and dates for increase to 480 hours.

Senior managers shall be credited with the amount of unused compensatory leave accrued as of July 1, 1998. Subject to the provisions of these regulations and any other applicable procedural directive, they may take such compensatory leave after July 1, 1998 until such leave balances are exhausted. Senior managers may carry over no more than 240 hours of previously accrued and unused compensatory leave into the 1999 calendar year. Upon separation, senior managers shall be granted a terminal leave payment for any such accrued and unused compensatory leave paid at the senior manager's current rate of pay, on an hourly basis, at the time of separation not to exceed a maximum of 240 hours.

-5 Call-Back Time.

Call-back time refers to situations wherein an employee is off duty and is called to return to work after departing from the workplace. It does not apply to those incidents where an employee is at work or has not departed from the work site and the work period is extended.

Employees called back to work shall be credited with a minimum of four hours overtime in each separate instance, excluding travel time, regardless of the hours actually worked.

- (a) FLSA eligible employees shall, at the employee's discretion, be granted compensatory time (at the time and one-half rate) or be paid at one and one-half times their hourly rate of pay for call-back hours. If the employee's compensatory leave balance is 240 hours or greater, the employee must be paid.
- (b) Straight pay eligible employees shall, at department head's or designee's discretion, earn straight compensatory time or be compensated at their hourly rate of pay for all call-back time.
- (c) Compensatory time eligible employees on all pay scales shall earn straight compensatory time for all call-back time.

-6 Consecutive Shift Time.

Consecutive Shift time refers to situations wherein an employee has completed a full eight or more hour shift and is required to remain on duty a second consecutive shift to perform essential services during an emergency situation or to meet minimum State certification standards in the Department of Public Works and Environmental Services.

Employees required to perform 2nd consecutive shifts shall be compensated as follows:

- (a) FLSA eligible employees shall, at the employee's discretion, be granted compensatory time (at the time and one-half rate) or be paid at one and one-half

times their hourly rate of pay for consecutive shift hours. If the employee's compensatory leave balance is 240 hours or greater, the employee must be paid.

- (b) Straight pay eligible employees shall, at the department head's or designee's discretion, earn straight compensatory time or be compensated at their hourly rate of pay for all consecutive shift time.
- (c) Compensatory time eligible employees shall earn straight compensatory time for all consecutive shift time.

4.15 Outside Employment; Violation of State Law on Conflict of Interests

- 1 Employees in the competitive service shall not engage in any employment, activity or enterprise, which has been or may be determined to be inconsistent, incompatible, or in conflict with duties, functions, or responsibilities of their County employment.
- 2 No employee in the competitive service shall hold any other position in any other governmental jurisdiction or in private employment, when such other position may have the effect of reducing the efficiency of such employee in the competitive service.
- 3 Employees in the competitive service who desire to accept outside employment in addition to their regular County positions shall inform their respective department head or designee of the nature and extent of such outside employment. The department head or designee shall thereupon determine whether or not the holding of such employment conflicts with the duties and responsibilities of said employee to the County.
- 4 Violation of the County's rules on outside employment or the Virginia State and Local Government Conflict of Interests Act or any successor statute thereto may be grounds for dismissal.

4.16 Application of Pay Policies to Deferred Retirement Option Plan (DROP) Participants

Notwithstanding any provision of this chapter to the contrary, employees who are participating in the Deferred Retirement Option Plan (DROP) are considered as merit employees and the pay provisions included in this chapter continue to apply during their DROP participation.

CHAPTER 10

Leave

10.1 Leave Defined

Leave is any authorized absence during regularly scheduled work hours that has been approved by proper authority. Leave may be authorized with or without pay. Absence without approval is considered unauthorized absence.

10.2 Leave Policy

All merit employees are encouraged to take annual leave for vacation purposes of two consecutive weeks each year. During the year, careful consideration shall be given to the desire and needs of employees in the granting of shorter periods of annual leave. Department heads or designees shall grant leave in accordance with these rules on the basis of the work requirements in the department, and whenever possible, the personal wishes of the employee.

10.3 Maintenance of Leave Records

The Department head or his/her designee shall be responsible for the maintenance of accurate leave records. Such records shall be kept on a form prescribed by the Human Resources Director, who may periodically inspect them to ensure that departments are adhering to the provisions of these rules.

10.4 Procedures for Requesting Leave

- 1 For all leave, with the exception of official holiday, unscheduled sick and administrative emergency leave, a request indicating the kind of leave, duration and dates of departure and return must be approved prior to the taking of the leave. The request for leave should be submitted to the department head or designee the same number of days prior to beginning the leave as the number of days leave requested. In the case of unscheduled sick leave, the request shall be completed and submitted for approval immediately upon the employee's return to duty.
- 2 Unless an absence is approved by the department head or his/her designee, an employee shall not be paid for any absences from scheduled work hours.

10.5 Unauthorized Absence

- 1 An employee who is absent from duty without approval shall:
 - a. Receive no pay for the duration of the absence;
 - b. Be subject to disciplinary action, which may include dismissal.

- 2 It is recognized there may be extenuating circumstances for unauthorized absence and due consideration shall be given each case.
- 3 Failure of an employee to report for work at the expiration of an authorized leave or to request an extension of such leave shall be considered an absence without leave.

10.6 Types of Leave

The following types of leave, and no other, are officially established:

- 1 Annual leave (Section 10.7 - 10.12);
- 2 Sick leave (Section 10.13 - 10.21);
- 3 Extraordinary sick leave (Section 10.16);
- 4 Paid family leave (Section 10.23)
- 5 Leave for injury in line of duty (Section 10.24);
- 6 Bereavement leave (Section 10.25);
- 7 Compensatory leave (Section 10.26 - 10.28);
- 8 Military leave (Section 10.29);
- 9 Civil leave (Section 10.30);
- 10 Volunteer activity leave (Section 10.31);
- 11 Leave without pay (Section 10.32);
- 12 Education leave (Section 10.33);
- 13 Holiday leave (Section 10.34 - 10.35);
- 14 Administrative leave (Section 10.36);
- 15 Leave for inclement weather or other emergencies (Section 10.37).

10.7 Granting Annual Leave

Department heads or designees shall grant annual leave with pay in accordance with the

following provisions:

- 1 Annual leave shall normally be granted unless a department head or designee specifically defers an employee's absence because of work requirements.
- 2 Annual leave shall not exceed the total amount credited to an employee at the beginning of the pay period in which the absence occurs.

10.8 Crediting of Annual Leave

Annual leave shall be credited as follows for merit employees and senior managers as designated in Chapter 4.

- 1 During pay periods in which a merit employee is in paid status for at least one hour, annual leave shall be credited according to scheduled hours. Incumbents in positions with 80 scheduled work hours per pay period will receive the following annual leave credits, based on length of service:
 - a. Less than three years of service receive four (4) hours;
 - b. Three (3) years but less than fifteen (15) years receive six (6) hours;
 - c. Fifteen (15) and greater years of service receive eight (8) hours.
- 2 Merit employees with scheduled hours other than 80 hours per pay period shall receive leave prorated according to total scheduled hours. Employees working in more than one merit position will accrue annual leave in all positions.
- 3 Employees who are participants in the Deferred Retirement Option Plan (DROP) will be considered as merit employees for purposes of crediting annual leave.
- 4 Employees reemployed or reinstated within one calendar year of their separation in good standing should have their annual leave computed on the basis of total years of service. Revised leave computation dates shall be rounded to the nearest day.
- 5 Employees with less than ten (10) years of service may accumulate annual leave up to 240 hours. Employees with ten (10) or more years of service may accumulate annual leave up to 320 hours.
- 6 Annual leave in excess of the limits imposed by this section existing at the end of each calendar year shall be converted to sick leave.
- 7 Employees shall not receive dual compensation from the County for annual leave.
- 8 Employees designated as senior managers shall receive 208 hours (26 days) of annual leave at the beginning of each calendar year. Senior managers appointed after the start of a calendar year shall receive annual leave credit on a prorated basis for that year.

10.9 Debiting Annual Leave

Annual leave shall be debited as follows:

- 1 The amount of annual leave to be debited shall be computed on the basis of the exact number of days or hours an employee is scheduled to work in the period when leave is taken.
- 2 Annual leave shall be debited in no less than one-tenth hour units.
- 3 Overdrawn annual leave shall be debited in the following order: compensatory leave, leave without pay.

10.10 Transfer of Annual and Sick Leave

Annual or sick leave may be transferred from one employee to another employee in the following situations:

- 1 Annual or sick leave may be transferred from one employee to another when the employee-in-need has exhausted his/her sick leave and is facing an absence without pay due to his/her extended illness or that of an immediate family or household member as defined in Chapter 2, with the following provisions:
 - a. Annual or sick leave may be transferred to any County employee eligible to receive sick leave.
 - b. Employees transferring sick leave may not transfer more than 80 hours in any calendar year.
 - c. The employee transferring annual or sick leave relinquishes all rights to that leave. Annual or sick leave transferred under this policy cannot be recovered at a later date.
 - d. An employee may not transfer leave to his/her immediate supervisor or reviewing authority for performance evaluations.
 - e. Unused transferred leave may be transferred to another leave recipient or returned to the donor.
 - f. Transferred leave may be granted only to employees who have exhausted their sick leave balance and whose combined annual and compensatory leave balance does not exceed 80 hours (120 hours for 24-hour shift employees).
 - g. This policy does not preclude or in any way limit the right of an employee to apply for advanced or extraordinary sick leave under existing procedures.

- h. Final approval of leave transfer requests rests with the department head or designee.
 - i. An employee who returns to work before using all received transferred leave may use the balance for subsequent treatment or recuperation from the ailment for which the leave was granted. This balance may be used for up to one year from the date transferred leave was approved.
- 2 Annual leave may be transferred from one employee to another when the employee-in-need is a member of the National Guard or an organized military reserve of the United States who has volunteered or been ordered to active duty pursuant to an order by the President of the United States or a competent State authority. The transfer of annual leave under this Section is subject to the following conditions:
- a. Annual leave may be transferred to any merit County employee who is a member of the National Guard or an organized military reserve of the United States.
 - b. The employee transferring annual leave relinquishes all rights to that leave. Annual leave transferred under this policy cannot be recovered at a later date. Once the leave has been used by the employee, it cannot be recovered.
 - c. An employee may not transfer leave to his/her immediate supervisor or reviewing authority for performance evaluations.
 - d. Transferred annual leave may only be used when the employee called to active military duty has reduced his/her accrued annual and compensatory leave to a combined balance no greater than 80 (120 hours for 24-hour shift employees) hours.
 - e. Final approval of leave transfer requests rests with the department head or designee.

10.11 Effect of Transfers on Annual Leave Credits

A merit employee who transfers from one department to another shall have his/her total annual leave credits transferred to the new department.

10.12 Effect of Separation on Annual Leave Credits

Upon separation, an employee shall be paid for the unused portion of his/her accrued annual leave, except as modified by the rules governing resignation without sufficient notice.

10.13 Sick Leave Policy

Sick leave shall be used when an employee is incapacitated by sickness or injury; for childbirth, placement of a child for adoption or foster care; for medical, dental, or optical diagnosis or

treatment; for necessary care and attendance or death of a member of the employee's immediate family or household member, as defined in Chapter 2; exposure to a contagious disease when the attendance at duty jeopardizes the health of others. Sick leave for childbirth and adoption/foster care placement shall comply with the provisions in Section 10.22 of these Regulations.

10.14 Granting Ordinary Sick Leave

Department heads or designees shall grant sick leave with pay to merit employees in accordance with the following provisions:

- 1 Ordinary sick leave shall not exceed the total amount credited to an employee at the beginning of the pay period in which the absence occurs;
- 2 Leave without pay may be granted for sickness extending beyond the earned credit;
- 3 For merit employees' annual or compensatory leave credits may be used for sick leave.

10.15 Granting Advance Sick Leave

- 1 Advance sick leave, not to exceed 192 hours (288 hours for 24-hour shift employees), may be granted to merit employees qualified to earn ordinary sick leave in cases of serious disability or ailments of the employee, the spouse, minor or disabled child, parent or parent-in-law of an employee when it is to the advantage of the County to do so.
- 2 Advance sick leave may be granted to employees whose combined annual and compensatory leave balance does not exceed 80 hours.
- 3 Advance sick leave shall not normally be advanced to a merit employee qualified to earn ordinary sick leave during his/her first year of service with the County.
- 4 Advance sick leave shall not be approved retroactively to restore hours previously charged to the employee's annual or compensatory leave balance for an ailment or disability.
- 5 When a department head or designee believes that a request for advance sick leave is justified, a personnel action form shall be prepared with the following supporting documentation:
 - a. The circumstances and the need for such leave verified by a physician's statement;
 - b. The time and date when accrued sick leave will be exhausted;
 - c. The number of hours of advance sick leave requested and date to which such leave will extend;

- d. Probable return to duty and prospect for continued employment;
 - e. Recommendation of the department head or designee;
 - f. Statement notifying employee of the repayment requirement if advance sick leave is approved.
- 6 The Human Resources Director shall consider the information provided and make a recommendation to the County Executive.
 - 7 Advance sick leave shall be approved by the County Executive or his/her designee.
 - 8 Advance sick leave shall be charged to future accruals of sick leave. An employee may not use regular sick leave until the approved advance sick leave is repaid.
 - 9 An employee who returns to work before using all approved advance sick leave may use the balance for subsequent treatment or recuperation from the ailment for which the leave was granted. This balance may be used for up to one year from the date advance sick leave was first used.
 - 10 An employee returning to work before using all approved advance sick leave may request an adjustment to his/her leave record to eliminate or reduce the remaining approved advance sick leave.
 - 11 When an employee who receives advance sick leave leaves County service for any reason and the advance sick leave has not been repaid, the County will be financially reimbursed for the balance of sick leave remaining, except in the case of full disability or death.

10.16 Granting Extraordinary Sick Leave

- 1 When the above provisions do not adequately allow for the illness or injury of a merit employee qualified to earn sick leave, and when the department head or designee believes that it is to the advantage of the County to do so, he/she may request of the County Executive, through the Human Resources Director, that the employee be granted an extraordinary sick leave not to exceed 4 hours (6.0 hours for 24-hour shift employees) for each month of service.
- 2 Extraordinary sick leave shall be recorded on the employee's leave record but shall not be charged to future accrued leave of any kind.

10.17 Crediting Sick Leave

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Sick leave shall be credited as follows for merit employees and senior managers as designated in Chapter 4.

- 1 During pay periods in which a merit employee is in paid status for at least one hour, sick leave shall be credit based on scheduled hours. Incumbents in positions with 80 scheduled work hours per pay period will receive a four (4) hour sick leave credit.
- 2 Merit employees with scheduled hours other than 80 shall receive sick leave prorated accordingly. Employees holding multiple merit positions are eligible to accrue sick leave on scheduled hours in all positions.
- 3 Unused sick leave may be accumulated without limit.
- 4 Employees, when separated in good standing and reemployed or reinstated within one calendar year of separation, shall have their unused sick leave reinstated.
- 5 Senior managers shall receive 104 hours (13 days) of sick leave at the beginning of each calendar year. Sick leave balances granted senior managers appointed after the start of a calendar year shall be prorated accordingly.
- 6 Employees who are participants in the Deferred Retirement Option Plan (DROP) will be considered as merit employees for purposes of crediting sick leave.

10.18 Debiting Sick Leave

Sick leave shall be debited as follows:

- 1 The amount of sick leave to be debited shall be computed on the basis of the exact number of days or hours an employee is scheduled to work in the period when leave is taken.
- 2 Sick leave shall be debited in no less than one-tenth hour units.
- 3 Overdrawn sick leave shall be debited in the following order: annual leave, compensatory leave, and leave without pay.

10.19 Effect of Transfer on Sick Leave Credits

A merit employee who transfers from one department to another shall have his/her total sick leave credits transferred to the new department.

10.20 Effect of Separation on Sick Leave Credits

- 1. Sick leave credits shall not be paid to an employee upon separation.

2. Upon application for retirement, an employee's sick leave credits can be applied towards membership service credit at the rate of one month of credit for each 172 hours of accrued unused sick leave and prorated for any fraction of this amount.
3. Employees who are participants in the Deferred Retirement Option Plan may apply all sick leave credits towards membership service credit for retirement or retain 40 hours as an initial sick leave balance, while the remaining sick leave credits are applied towards membership service credit for retirement.

10.21 Other Factors Relative to Sick Leave

- 1 Reporting of sickness.
Employees who are absent from duty for reasons which entitle them to sick leave shall notify their respective supervisors within the time frame established by the Department unless physically unable to do so. Upon return to work, the employee shall submit immediately to his/her supervisor an authorization for leave form.
- 2 Medical certificate.
A department head or designee may require a medical statement for sick leave when it occurs before or after a holiday or other scheduled day off, or when it is in excess of two workdays. When an employee has a record of repetitious usage of short amounts of sick leave over an extended period a department head or designee may require a medical certificate for each day of sick leave taken. Employees shall be provided advance notice that a medical certificate will be required for future absences.
- 3 The department head or designee may require an employee returning from sick leave to take a medical examination, or, with the concurrence of the Human Resources Director, on such other occasions that he/she deems it in the best interest of the County. The medical examination shall be given by a medical doctor designated by the Human Resources Director or his designee.
- 4 Investigation of sickness. A department head or designee may investigate the alleged illness of an employee absent on sick leave.
- 5 False or fraudulent use of sick leave. False or fraudulent use of sick leave shall be cause for disciplinary action against the offending employee. Such disciplinary action may include dismissal.
- 6 An employee on annual leave who presents a medical certificate giving the dates of illness may have that portion of his/her annual leave converted to sick leave.
- 7 Conversion of sick leave. Conversion of sick leave to annual leave shall not be permitted.

- 8 State worker's compensation insurance. An employee, who is eligible to receive state worker's compensation payments beyond the year of injury leave, may elect to use accumulated sick leave and/or annual leave. The use of such leave will be coordinated with worker's compensation payments so that the total amount received from both sources does not exceed the employee's full wage or salary until such sick and/or annual leave is depleted or until the employee returns to work.

Leave hours used will be calculated only on that portion of total compensation over the workers' compensation payment. While using sick and/or annual leave the employee will continue accruing sick and annual leave.

10.22 Family and Medical Leave

Eligible employees, as defined by the implementing regulations of the Family and Medical Leave Act, may take job-protected, unpaid leave, or substitute appropriate paid leave, for up to a total of 12 workweeks in any 12 months for the birth of a child, for the placement of child for adoption or foster care, because the employee is needed to care for a family member (child, spouse, parent or parent-in-law) with a serious health condition, because the employee's own serious health condition makes the employee unable to perform the functions of his or her job, or because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, parent or parent-in-law is a covered military member on covered active duty. In addition, eligible employees may take job-protected, unpaid leave or substitute appropriate paid leave for up to a total of 26 workweeks in a single 12-month period to care for a covered service member with a covered serious injury or illness. The terms "covered military member," "covered active duty," and "covered serious injury or illness" shall be defined as set forth in the Family and Medical Leave Act as amended.

Family and medical leave consists of any combination of sick leave, annual leave, paid family leave, compensatory leave, and leave without pay. Sick leave used for the purpose of family or medical leave must conform to the requirements in Section 10.13. If paid family leave (Section 10.23) is taken for the birth, adoption, or foster care placement of a child, the leave must be applied towards the employee's Family and Medical Leave entitlement if applicable.

- 1 Family and medical leave shall be granted to any merit employee for a period of up to twelve work weeks over a twelve-month period. The twelve-month period during which family and medical leave may be taken for the birth of or placement of a child shall expire at the end of the twelve-month period beginning on the date of birth or placement. Service member caregiver leave is granted for up to 26 workweeks during a single 12-month period on a per-covered service member and per-injury/illness basis. Work week is defined as the hours an employee is regularly scheduled to work in a seven (7) consecutive day period.
- 2 The twelve-month period for family and medical leave usage shall commence with the first use of family or medical leave. The single twelve-month period for service member caregiver leave shall commence with the first day the eligible employee takes service

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member caregiver leave and ends 12 months after that date regardless of the 12-month period established for prior FMLA qualifying events.

- 3 Requests for leave beyond 12/26 work weeks are subject to regular leave policies with approval determined by the department head or designee.
- 4 Requests for family and medical leave must be made in writing and submitted 30 calendar days in advance whenever the necessity for such leave is foreseeable.
- 5 The mother may take six (6) weeks of sick leave immediately following the birth of her child. Use of additional sick leave requires medical certification. The non-birthing parent may take four (4) weeks of sick leave immediately following the birth of the child. Use of additional sick leave requires medical certification.
- 6 Parents and guardians may take four (4) weeks of sick leave immediately following placement of a child for adoption or foster care. Use of additional sick leave requires medical certification.
- 7 Family leave to include exigency leave may be taken on an intermittent or reduced schedule basis with the approval of the department head or designee. Medical leave may be taken on an intermittent or reduced schedule basis if certified as necessary by the health provider.
- 8 At the request of the department head or designee, the employee shall provide certification from a health care provider in connection with a request for medical leave. Additionally, an employee may be required to provide medical documentation concerning the continuing necessity for medical leave and in connection with any issue concerning his/her ability to return to work at the expiration of medical leave.
- 9 At the request of the department head or designee, the employee shall provide certification of a qualifying exigency in connection with a request for exigency leave.
- 10 At the discretion of the department head or designee, an employee requesting family leave for the birth or adoption of a child may be required to use all approved paid family leave, accrued annual, or sick leave prior to use of leave without pay. Employees requesting family or medical leave for all other reasons may be required to use accrued sick, and/or annual leave prior to use of leave without pay.
- 11 During the leave period, the County will provide coverage under the health insurance plan which the employee had selected prior to going on leave at the level and under the conditions coverage would have been provided if the employee had not gone on leave.
- 12 If the employee fails to return to work for a reason other than the continuation, recurrence, or onset of a serious health condition for him or herself, children, spouse, parents, parents-

in-law, or injured family service member or other circumstances beyond the control of the employee, the County may recover the employer's contribution to the health insurance premium paid during any period of unpaid leave.

- 13 No employee shall be prevented from returning to work prior to the expiration of the 12/26 week period.
- 14 Employees shall return to the position vacated or, with the approval of the Human Resources Director, to another position in the same class.
- 15 Employees who do not plan to return to work should notify their department no later than at the expiration of the leave. Failure to return to work without giving notice at the expiration of the leave without good cause may result in an unsatisfactory service separation.
- 16 This regulation shall be construed as to ensure compliance with the minimum requirements of the Family and Medical Leave Act of 1993.

10.23 Paid Family Leave

Paid leave granted to eligible employees for any qualifying reason that would be covered under the Family and Medical Leave Act (FMLA) of 1993 and as set forth in section 10.22 above. Paid family leave shall only be available for the qualifying absences that would be covered under the Family Medical Leave Act on or after the effective date of this regulation.

- 1 All merit employees, including those in their initial probationary period, are eligible for paid family leave (PFL). Merit employees in their initial probationary period become eligible for paid family leave on the first day of the month following the employee's date of original appointment.
- 2 Fulltime merit employees may be eligible to take up to total of 240 hours of paid family leave (360 hours for 24-hour staff) in a twelve-month period. Merit employees scheduled to work less than 80 hours per pay period may be eligible for paid family leave pro-rated on the basis of scheduled work hours per pay period in a twelve-month period.
- 3 Paid family leave shall run concurrently with family and medical leave (Section 10.22) to the extent that family and medical leave is available to the employee.
- 4 For other than birth or placements for adoption/foster care events, the twelve-month period for paid family leave shall commence with the first use of paid family leave. For birth or placements for adoption/foster care events, the twelve-month period for paid family leave shall commence with the date of such birth or placement. Unused paid family leave hours do not carry over to another 12-month period.

Commented [AJ1]: Insert clarifying language.

Commented [AJ2]: Insert clarifying language.

- 5 Requests for paid family leave must be made in writing and submitted 30 calendar days in advance whenever the necessity for such leave is foreseeable.
- 6 Eligible employees are entitled to a total of up to 6 weeks paid family leave in a single twelve-month period.
- 7 Paid family leave can be taken on an intermittent (periodic) or consecutive (continuous) basis when certified as medically necessary by a healthcare provider. A request to use paid family leave on an intermittent basis which is not medically necessary (i.e. bonding time with a baby) must be coordinated and approved at the discretion of the department based on staffing and operational needs.
- 8 At the request of the department head or designee, the employee shall provide certification from a health care provider in connection with a request for paid family leave.
- 9 At the request of the department head or designee, the employee shall provide certification of a qualifying exigency in connection with a request for paid family leave.
- 10 Employees who are eligible for sick leave under sections 10.22-5 and 10.22-6 may utilize sick leave prior to using paid family leave.
- 11 Employees must exhaust paid family leave prior to using leave without pay, donated leave, advanced sick leave, or extraordinary sick leave.
- 12 Employees who leave County service while on paid family leave are not entitled to be paid for any unused portion of paid family leave.
- 13 Employees who do not plan to return to work should notify their department no later than at the expiration of the paid family leave. Failure to return to work without giving notice at the expiration of the leave without good cause may result in an unsatisfactory service separation

10.24 Leave for Injury in Line of Duty

- 1 A merit employee who is injured while performing the duties of his/her position, without fault or negligence on his/her part, and who is accepted as compensable under the Virginia Worker's Compensation Act, shall be granted injury leave with pay, as approved by the County Executive or his/her designee. Such eligibility for injury leave with pay begins on the first day of injury and shall expire not later than twelve calendar months from the original injury date. Reinjuries do not extend the period of eligibility for injury leave. Such leave requires a medical certificate from an approved licensed physician authorized by the

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County to treat worker's compensation claims. This certificate must set forth the nature and extent of the injury and the probable period of disability.

- 2 Extensions of injury leave beyond twelve calendar months may be granted by the department head or designee. In no case shall the employee be granted injury leave in excess of 2080 (2912 for 24-hour shift fire protection employees) total hours. In evaluating such requests, the following elements shall be considered:
 - a. The circumstances in which the injury occurred to include consideration of the nature and extent of the injury;
 - b. The nature and extent of treatment providing that the employee has continued under the regular care of the authorized physician requiring an office visit at minimum intervals of at least once every three months; and providing that the medical records clearly substantiate a relationship between the current prescribed treatment and the original injury;
 - c. The likelihood of the employee's return to duty;
 - d. The employee's past injury, leave and service record;
 - e. The employee's compliance with injury leave policies and requirements.
- 3 When possible, employees who have been injured but are not totally disabled, will be placed in temporary assignments without loss of pay with duties that fall within the medical restrictions prescribed by the treating physician.
- 4 When injury leave is used other leave benefits shall not accrue.
- 5 An employee on injury leave is expected to follow medical procedures and complete necessary forms/reports so as to ensure that worker's compensation payment will be credited to the appropriate account.
- 6 An employee on injury leave is specifically prohibited from engaging in activities that may impair his/her recovery. This includes:
 - a. Engaging in strenuous recreational or other physical activities without the approval of the authorized physician.
 - b. Being employed or self-employed to perform work of any kind without the prior written approval of the authorized physician and the Human Resources Director.
- 7 An employee on injury leave is not required to remain at home, but is required to be available for contact by his/her supervisor and to notify the supervisor of any change of

residence during authorized absence.

- 8 Failure of an employee on injury leave to follow prescribed procedures or to accept appropriate medical treatment, vocational rehabilitation, or medically appropriate temporary assignments, may result in disallowal of full salary continuation and reversion to straight worker's compensation wages, if eligible, for the time period of noncompliance, with the employee being liable for repayment of the monetary differential.

10.25 Bereavement Leave

Bereavement leave may be used to cover an absence resulting from the death of an employee's extended family or household member, as defined in Chapter 2. Department heads or designees shall grant bereavement leave with pay to merit employees in accordance with the following provisions:

- 1 Full time merit employees shall be eligible to use up to 16 hours of bereavement leave per calendar year (24 hours for full time 24-hour shift fire protection employees). Merit employees scheduled to work less than 80 hours per pay period shall be eligible for bereavement leave on a pro-rated basis.
- 2 Bereavement leave may not be carried over from one calendar year to the next.
- 3 The amount of bereavement leave to be debited shall be computed on the basis of the exact number of hours an employee is scheduled to work in the period when the leave is taken.
- 4 Bereavement leave shall be debited in no less than one-tenth hour units.
- 5 Sick leave may be granted for absences extending beyond bereavement leave eligibility in accordance with the sick leave provisions herein.

10.26 Compensatory Leave

- 1 Compensatory leave shall be credited to an employee as provided for in the rules governing overtime. Employees who are participants in the Deferred Retirement Option Plan (DROP) will be considered as merit employees for purposes of crediting compensatory leave.
- 2 Compensatory time for overtime worked shall be granted at the discretion of the employee at a time convenient to and approved by the department head or designee.
- 3 Overdrawn compensatory leave shall be debited in the following order: annual leave, leave without pay.

10.27 Effect of Transfers on Compensatory Leave

An employee who transfers from one department to another shall have his/her compensatory leave transferred to the new department.

10.28 Effect of Separation on Compensatory Leave

An employee who is separated from service may only be paid for any accrued overtime for which he/she has not been granted compensatory leave in accordance with the provisions of section 4.15-4.

10.29 Military Leave

- 1 A merit employee who is a member of the National Guard or an organized military reserve of the United States, or is a former member of the Armed Services and has been reactivated by a competent authority shall be allowed military leave under the following circumstances:
 - a. Leaves of absence with pay not to exceed fifteen workdays during any one federal fiscal year (October 1 - September 30) to attend federally funded military duty, including duty for training. For the purposes of this section, one 24-hour shift workday shall equate to two military leave workdays. The employee shall report to work in accordance with the following schedule:
 - 1. If the period of service is less than 31 days, the employee must report back to work not later than the beginning of the next regularly scheduled workday after the military duty, including travel time and an 8-hour rest period, is completed.
 - 2. If the period of service is more than 30 days but less than 181 days, the employee must report back to work not later than 14 calendar days after completing service.
 - 3. If the period of service is more than 180 days, the employee must report back to work not later than 90 days after completing service.
 - 4. If the employee is hospitalized or convalescing from an injury or illness incurred during the period of service, then the time for the employee to report back to work will be extended.
 - b. Leaves of absence without pay for training not covered above. The employee shall report to work the next regularly scheduled workday after the training period, including travel time and an 8-hour rest period, is completed.
- 2 A merit employee who is a member of the Virginia National Guard and who is called to emergency duty by the Governor to combat floods, riots, winter storms, hurricanes, or other disasters shall be allowed military leave with pay for each day of such service. A merit employee who is a member of any National Guard organization other than the State of Virginia and who is called to emergency duty by the competent authority of that state may elect to be placed on military leave without pay for each day of such service.

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- 3 The employee shall notify his/her supervisor as far in advance as possible when taking military leave. The employee's notice may be either verbal or written. A copy of military orders may be requested but cannot be required. Failure to notify the County in advance shall not deprive the employee of rights and benefits.
- 4 An employee who leaves the County service in order to join the military forces of the United States or who is inducted into such service has resigned and is not considered to be on military leave. (Section 9.2-5).
- 5 In the event of any conflict between County regulations and federal or state law, the latter shall take precedence.

10.30 Civil Leave

A merit employee shall be given time off without loss of pay when performing jury duty, when subpoenaed or requested to appear before a court, public body or commission except when the employee is a party to the suit, when performing emergency civilian duty in connection with national defense, or for the purpose of voting. Leave for the purpose of voting shall only be granted when the employee's work schedule prohibits voting before or after duty hours or through absentee balloting.

10.31 Volunteer Activity Leave

Volunteer activity leave may be used to participate in volunteer activities and initiatives to support the neighborhoods in which employees live and work to include educational and charitable institutions, religious/faith-based, and community service entities. Department heads or designees shall grant volunteer activity leave with pay to merit employees in accordance with the following provisions:

- 1 Full time merit employees shall be eligible to use up to 16 hours of volunteer activity leave per calendar year (24 hours for full time 24-hour shift fire protection employees). Merit employees scheduled to work less than 80 hours per pay period shall be eligible for voluntary activity leave on a pro-rated basis.
- 2 Voluntary activity leave may not be carried over from one calendar year to the next.
- 3 The amount of voluntary activity leave to be debited shall be computed on the basis of the exact number of hours an employee is scheduled to work in the period when the leave is taken.
- 4 Voluntary activity leave shall be debited in no less than one-tenth hour units.

10.32 Leave Without Pay

A department head or designee may grant a merit employee a leave without pay for a period not to exceed one year, subject to the following conditions:

- 1 Leave without pay shall be granted only when it is in the interests of the County to do so. The interests of the employee shall be considered when he/she has shown by his/her record to be of more than average value to the County and when it is desirable to return the employee even at some sacrifice.
- 2 At the expiration of a leave without pay, the employee shall be reinstated in the position he/she vacated or in any other vacant position in the same class.
- 3 The employee does not earn leave while on leave without pay.
- 4 Failure on the part of the employee to report promptly at the expiration of a leave without pay may be cause for dismissal.

10.33 Education Leave

A merit employee engaged in professional or technical work may be granted a leave of absence with full or partial pay for enrollment in a special institute or course of study of direct benefit to the County service, at the discretion of the department head or designee.

Such leave may be granted on the assumption that the employee will remain with the County service for a reasonable period to be recommended by the department head or designee, upon completion of the institute or course of study.

10.34 Holiday Leave

- 1 The following holidays are observed by the County and shall be granted to merit employees with pay, unless such employees are required to be on scheduled duty.
 - a. New Year's Day (January 1);
 - b. Martin Luther King, Jr.'s Birthday (Third Monday in January);
 - c. George Washington's Birthday – Presidents' Day (Third Monday in February);
 - d. Memorial Day (Last Monday in May);
 - e. Independence Day (July 4);
 - f. Labor Day (First Monday in September);

- g. Columbus Day (Second Monday in October);
 - h. Veteran's Day;
 - j. Thanksgiving Day (Fourth Thursday in November);
 - k. Fall Holiday (Friday after Thanksgiving);
 - l. Christmas Eve (One-half day on December 24);
 - m. Christmas Day (December 25);
 - n. Inauguration Day (January 20, every fourth year) when it falls on a business day, Monday through Friday.
- 2 The County Executive may also set aside other days as holidays.

10.35 Granting Holiday Leave

The granting of holidays observed by the County shall be subject to the following provisions:

- 1 Holidays on a weekend.
When a holiday falls on Saturday, it shall be observed on the preceding Friday. When a holiday falls on Sunday, the following Monday shall be observed as the holiday.
- 2 Holiday on scheduled workday
 - a. Holiday on scheduled workday; employee works. Employees who are required to work on a holiday (actual or County observed) shall be compensated for the time worked in accordance with the rules governing hours and overtime. Holiday compensation will be provided on an hour for hour basis for an employee's regular scheduled hours not to include overtime hours. If an employee who would not normally work the holiday, is scheduled to work to meet staffing or other operational needs, the employee is entitled to receive holiday compensation for hours worked not to exceed the number of his/her regularly scheduled hours.
 - b. Holiday on scheduled workday; employee does not work. Employees who are required to work on a holiday (actual or County observed) but do not work, shall be compensated as follows. Holiday compensation will be provided on an hour for hour basis up to the number of regularly scheduled hours for that day.
- 3 Holiday on scheduled day off. Within the policy established in the section on holiday leave, whenever one of the designated holidays falls on an employee's scheduled day off, the employee shall be granted either holiday pay or holiday compensatory time in accordance with

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the rules governing hours and overtime. To receive holiday compensation on an actual holiday, an employee must be directed by his/her supervisor to work due to staff shortage or other operational necessity.

- 4 Holidays for merit part-time employees. Part-time merit employees shall be granted holiday time off with pay on a pro-rated basis regardless of the number of hours scheduled on the day a holiday falls computed at the rate of one-tenth of an hour times the employees bi-weekly scheduled hours.
- 5 Holidays during paid leave. A holiday falling within a period of paid leave shall not be counted as a workday in computing the amount of leave debited.
- 6 Holiday during unpaid leave. When a holiday falls within a period of leave without pay, the employee shall be granted either holiday pay or holiday compensatory time in accordance with the rules governing hours and overtime.
- 7 Appointment on a holiday. The appointment of a merit employee shall not be affected on a holiday except when the employee works that day.

10.36 Administrative Leave

- 1 Administrative leave shall be any paid leave authorized by the County Executive, which is not otherwise classified by these Regulations.
- 2 Administrative leave will normally¹ be granted to any full-time or part-time employee by an appointing authority or the County Executive for any of the following reasons:
 - a. Where an employee is required to appear before a public body, public agency, board or commission during normal working hours on matters relating to County business.
 - b. For the attendance in an official capacity during normal working hours as a representative of the County at meetings, symposiums, conferences, conventions or hearings.
 - c. During the investigation of an alleged improper act by an employee which may result in formal disciplinary actions and/or when the retention of the employee on an active duty status may be detrimental to the interests of the County or injurious to the employee, his/her fellow workers or the general public, Administrative Leave for this purpose will not exceed ten business days without prior approval of the County Executive. A memorandum to the Human Resources Director will be submitted by the department head or designee giving details of the Administrative Leave for all situations covered by this paragraph. In lieu of the use of Administrative Leave for

¹ Exceptions to be justified and made a matter of record.
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situations of this type, a department head or designee may temporarily assign the employee to other duties.

- d. For participation in the blood donor program for which purpose up to four hours may be granted, at the discretion of department head or designee, for each recuperative purpose.
 - e. For the purpose of undergoing a medical examination as may be required by the employee's department head or designee.
 - f. To recognize long term service to general county employees who earn length of service awards of 20, 25, 30, 35, 40 and 45 years or more shall be eligible for two days of administrative leave (24 hours for 24-hour shift firefighters) in the year after they have qualified for the length of service award.
 - g. To recognize outstanding performance such as Outstanding Performance Awards or Team Excellence Awards. The number of hours received for Outstanding Performance Awards or Team Excellence Awards shall be equal to one day of administrative leave (12 hours for 24-hour shift firefighters).
 - h. For officers of the Employees Advisory Council and employee organizations, who participate in payroll dues deduction to attend conventions and training related to employee relations. Administrative Leave for this purpose shall not exceed 30 workdays (240-hours) per year per employee organization. In the accrual of hours toward the 240-hour limit, one 24-hour shift shall equate to 16 hours of administrative leave. Employees must submit such leave requests as far in advance as possible and provide written verification upon return to duty of attendance at the convention or employee relations training. Respective employee group leaders are accountable for monitoring and ensuring compliance with this policy.
 - i. When a non-Office of Elections employee volunteers to work for *Fairfax County's* Office of Elections on an election day or completes training for election volunteer workers.
- 3 In addition to the provisions of paragraph -2 above, Administrative Leave may be granted to any full-time or part-time employee by the County Executive or his/her designee for any of the following reasons:
- a. Breakdown of essential facility services such as heating, air conditioning, or water or other problems wherein facilities must be closed and employees released early from work or not required to report to work.
 - b. Breakdowns of equipment making it impossible to accomplish assigned tasks.

10.37 Leave for Inclement Weather or Other Emergency

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- 1 When extreme inclement weather or other emergencies occur, the County Executive or his/her designee shall have the option to declare one of the following types of leave:
- a. Unscheduled Leave - may be declared by the County Executive or his/her designee when it is deemed advisable to provide employees flexibility regarding reporting to work due to inclement weather or other emergency. Unscheduled leave authorizes all employees, except those designated as emergency service personnel, to use their own leave to remain home from work or to leave work early without obtaining prior approval from their supervisor. Employees, however, must notify their supervisors if they opt to stay home on unscheduled leave. Employees may only use annual leave, compensatory leave, or leave without pay for this purpose. Such leave is authorized only for the period of time designated by the County Executive or his/her designee.
 - b. Emergency Administrative Leave - may be declared by the County Executive or his/her designee when it is determined necessary to close the general County government due to extreme inclement weather or other emergency. Emergency administrative leave authorizes all merit County employees, except those designated as emergency service personnel, to remain home from work or to leave work early without prior approval of the supervisor and without the use of personal leave or leave without pay. Such leave shall be limited to the time periods designated by the County Executive or his/her designee. Employees required to work during a period of such emergency administrative leave shall receive extra compensation in accordance with provisions contained in Chapter 4.
- 2 When leave for inclement weather or other emergency is declared, emergency service personnel must report to work. Emergency service personnel are those employees, designated by the department head or designee, who due to the nature of the emergency, which has occurred, must report to work to ensure that public health and safety needs or critical departmental requirements are met.




County of Fairfax, Virginia

MEMORANDUM

DATE: October 8, 2020

TO: Catherine Spage, Director
Department of Human Resources

FROM: Nicole Rawlings, Executive Director 
Civil Service Commission

SUBJECT: Public Hearing on Proposed Revisions to the Personnel Regulations –
Chapters 4 and 10

Following an advertised electronic public hearing held on October 8, 2020, the Civil Service Commission considered revisions to the above referenced chapters of the Personnel Regulations. Members of the Commission participating in the public hearing included, Farzin Farzad, Jason Fong, Thomas Garnett, John Harris, Vanessa R. Jordan, Herb Kemp, Nancy Rice, Sara Simmons, John Townes and Deborah Woolen. Commissioner Patrick Morrison did not participate.

Cathy Spage, Director, Department of Human Resources (DHR) provided an overview of the proposed changes for each chapter. Ms. Spage shared that the proposed changes were to clarify language in Chapter 10 with respect to commencement of the twelve-month period under Paid Family Leave for birth or placement for adoption/foster care events and to update Chapter 4 to allow employees to carry forward a greater number of hours of Compensatory Time earned in 2020 and 2021. She noted that the proposed change to Chapter 4 is necessary to accommodate the many extra hours staff have worked beyond their regularly scheduled hours in response to the COVID-19 Pandemic.

Ms. Spage was accompanied by Diane Roteman, Employee Relations Division Director, DHR and Leah Huggins-Ellis, Family Medical Leave Coordinator for the County, DHR.

The proposed changes were presented as follows:

Chapter 4

The proposed changes to Chapter 4 add language to Section 4.14-4b increasing the number of hours of Compensatory Time an employee can carry forward on December 31, 2020 and December 31, 2021 from 240 hours to 480 hours. On December 31, 2022, the maximum number of hours of Compensatory Time an employee can carry forward reverts to 240 hours.

Chapter 10

The proposed changes to Chapter 10 add language to Section 10.23-4 clarifying when the twelve-month period commences for birth or placement for adoption/foster care events under Paid Family Leave.

Civil Service Commission
12000 Government Center Parkway, Suite 258
Fairfax, Virginia 22035
Phone 703-324-2930 Fax 703-653-9431
www.fairfaxcounty.gov

Catherine Spage

Page 2

Michelle Starr, of the Service Employees International Union registered to speak in advance of the hearing. Ms. Starr expressed that she had no objections to the proposed changes. No additional public comment was provided.

The members of the Civil Service Commission participating in the public hearing voted unanimously, without further discussion, to recommend that the Board of Supervisors approve the proposed changes for Chapters 4 and 10 as advertised and presented.

If the Commission can be of further assistance in clarifying these proposed changes, please let me know.

cc: Board of Supervisors
Commissioners, Civil Service Commission
Bryan J. Hill, County Executive
Karen Gibbons, Deputy County Attorney
Vicki Kammerude, Chair, EAC
Ron Kuley, President, Local 2068
Joseph Abbate, President, Fairfax Deputy Sheriff's Union, SEIU
Brad Carruthers, President, Fraternal Order of Police, Lodge 77
Sean Corcoran, IUPA, Local 5000
Tammie Wondong, President, FCEGU, SEIU
Kirt Cleveland, Fairfax Workers Coalition
Brenda C. Zwack, Esq., AFSCME Local 3001
Karen Conchar, SEIU 512

Board Agenda Item
November 17, 2020

ACTION - 3

Authorization to Use Economic Opportunity Reserve for Local Match of a Governor's Agriculture and Forestry Industries Development Fund Facility Grant (Hunter Mill District)

ISSUE:

Board of Supervisors' authorization to allocate \$25,000 from the Economic Opportunity Reserve (EOR) as the County's local match requirement of a Commonwealth Agriculture and Forestry Industries Development Fund Facility Grant (AFID Grant). The AFID Grant supports the creation of new jobs and manufacturing of OM LASSI, LLC, doing business as OmMade Peanut Butter (OmMade) in Fairfax County. The AFID Grant, along with the local match, will contribute to the costs of opening a manufacturing and storefront operation that will increase the operation of OmMade's production, create new jobs, and support its growing customer base.

RECCOMENDATION:

The County Executive recommends that the Board of Supervisors (Board) allocate a portion of the EOR for this purpose and execute the Performance Agreement in substantially the form of Attachment 1.

TIMING:

Board action is requested on November 17, 2020, in order to have the funds available for OmMade to begin its expansion in 2021.

BACKGROUND:

On July 25, 2017, the Board authorized the evaluation of the use of the EDSF to support local matches of AFID Grant awards from the state. On October 17, 2017, the AFID Grant program was reviewed by the Board at their Budget Committee meeting and the Board subsequently encumbered \$500,000 of the Economic Development Support Fund (EDSF) on November 21, 2017, for the purpose of serving as the local match requirement for successful AFID Grants.

In October 2018, \$100,000 of the EDSF was used for a local match for an AFID Grant to The Winery at Bull Run. The remaining \$400,000 in encumbered funds are available for additional AFID grant opportunities. As part of the *FY 2019 Carryover Review*, all previously appropriated EDSF funding, including the County local match for the AFID

grants, was transferred to the newly established Economic Opportunity Reserve (EOR) to continue support of County economic development projects.

OmMade's founder Radhika Murari began making homemade peanut butter in Reston using Virginia peanuts in 2012. After five years of perfecting her recipe and sharing with family and friends, Radhika began selling her peanut butter at farmer's markets and established an online store. Today, she continues to sell online and has a contract to distribute her product to ten Whole Foods stores within the region. Radhika has outgrown her existing kitchen and is seeking to expand using new commercial grade equipment to produce at scale.

OmMade was awarded an AFID Grant to support an expansion into commercial space and purchase new production equipment to grow and expand its business. The AFID grant award is conditioned upon successful completion of the terms documents in the performance agreement, which governs the use of the award, and a match by Fairfax County of the funding provided by the Commonwealth through the AFID Grant.

The Commonwealth, Fairfax County, and OmMade have drafted the following criteria for the AFID Grant award, which are included in the attached Performance Agreement (Attachment 1):

For the purpose of inducing OmMade Peanut Butter to expand manufacturing and build out a facility:

- The Virginia Department of Agriculture and Consumer Services (VDACS) will provide a \$25,000 AFID Grant, and
- Fairfax County will provide a \$25,000 investment from the Economic Opportunity Reserve, as a local match to the AFID Grant.

OmMade is then obligated to meet the following performance criteria:

- Make qualified capital expenditures of at least \$248,250 for taxable tangible personal property or taxable real property,
- Create two new full-time jobs and three full-time equivalent jobs at the facility, and,
- Increase the purchase of Virginia-grown agricultural products by \$48,000.

These performance criteria must be met by December 31, 2023. To track progress towards these performance measures, OmMade will provide annual reporting to Fairfax County and VDACS over the three-year period.

The EOR local match of the AFID Grant illustrates Fairfax County's commitment to supporting agricultural enterprises and small-scale manufacturers as a critical and

Board Agenda Item
November 17, 2020

growing part of our economy which is included as an element in our strategy for economic success.

FISCAL IMPACT:

Total funding available to OmMade is \$50,000. This includes \$25,000 allocated from current year appropriations in Fund 10015, Economic Opportunity Reserve. In addition, \$25,000 in grant funding from the Commonwealth Agriculture and Forestry Industries Development Fund will be appropriated in Fund 50000, Federal/State Grant Fund and can be processed administratively as it is within the monetary parameter for unanticipated awards.

ENCLOSED DOCUMENTS:

Attachment 1 – Draft Performance Agreement for Governor’s Agriculture & Forestry Industries Development Fund

STAFF:

Rachel Flynn, Deputy County Executive
Rebecca Moudry, Director, Department of Economic Initiatives
Scott Sizer, P3/Joint-Ventures Policy Coordinator, Department of Economic Initiatives
Joe LaHait, Debt Coordinator, Department of Management and Budget
Chase Suddith, Management Analyst, Department of Economic Initiatives

ASSIGNED COUNSEL:

Patricia McCay, Senior Assistant County Attorney

**GOVERNOR'S AGRICULTURE & FORESTRY INDUSTRIES DEVELOPMENT
FUND**

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** (the "Agreement") made and entered this ____ day of _____, 2020, by and among the **COUNTY OF FAIRFAX, VIRGINIA** (the "Locality") a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), and **OM LASSI, LLC DBA OMMADE PEANUT BUTTER** (the "Company"), a Limited Liability Corporation authorized to transact business in the Commonwealth, and the **FAIRFAX COUNTY ECONOMIC DEVELOPMENT AUTHORITY** (the "Authority"), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$25,000 from the Governor's Agriculture & Forestry Industries Development Fund (an "AFID Grant") through the Virginia Department of Agriculture and Consumer Services ("VDACS") for the purpose of inducing the Company to purchase and operate an agriculture and/or forestry processing/value-added facility using Virginia-grown products in the Locality (the "Facility"), thereby making a significant Capital Investment, as hereinafter defined, creating a significant number of New Jobs and New Full-Time Equivalent Positions (FTEs), as hereinafter defined; and using a significant amount of Virginia-Grown Agricultural and Forestal Products, as such capitalized items are hereinafter defined.

WHEREAS, the Locality is willing to provide the funds to the Authority with the expectation that the Authority will provide the funds to or for the use of the Company, provided that the Company promises to meet certain criteria relating to Capital Investment, New Jobs and FTEs, and use of Virginia-Grown Agricultural and Forestal Products;

WHEREAS, the Locality, the Authority, and the Company desire to set forth their understanding and agreement as to the payout of the AFID Grant, the use of the AFID Grant proceeds, the obligations of the Company regarding Capital Investment, New Job and FTE creation, use of Virginia-Grown Agricultural and Forestal Products, and the repayment by the Company of all or part of the AFID Grant under certain circumstances;

WHEREAS, the purchase and operation of the Facility will entail taxable capital expenditures by or on behalf of the Company of approximately \$248,250, of which approximately \$198,250 will be invested in machinery and tools, approximately \$45,000 will be invested in the construction and/or improvement of a building and site, and approximately \$5,000 will be invested in furniture, fixtures and business personal property;

WHEREAS, the purchase and operation of the Facility will further entail the creation of two (2) New Jobs and three (3) New Full-Time Job Equivalent (FTEs) at the Facility;

WHEREAS, the purchase and operation of the Facility will further lead to the use of Virginia-Grown Agricultural and Forestal Products in the following amount: \$48,000 (or 30,000 pounds); and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment, New Jobs, and use of Virginia-Grown Agricultural and Forestal Products constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the AFID Grant:

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

Section 1. Definitions.

For the purposes of this Agreement, the following terms shall have the following definitions:

“Capital Investment” means a capital expenditure by the Company in taxable real property, taxable tangible personal property, or both, at the Facility. The Capital Investment must be in addition to the capital improvements at the Facility as of the date of the Grant Award Date. A capital expenditure related to a leasehold interest in real property will be considered to be made “on behalf of the Company” if a lease between a developer and the Company is a capital lease, or is an operating lease having a term of at least ten years, and the real property would not have been constructed or improved but for the Company’s interest in leasing some or all of the real property. Only the capital expenditures allocated to the portion of the real property to be leased by the Company will count as “Capital Investment.” The purchase or lease of furniture, fixtures, machinery and equipment, including under an operating lease, and expected building up-fit and tenant improvements by or on behalf of the Company will qualify as Capital Investment.

“Grant Award Date” means September 30, 2020. This is the date from which progress towards the achievement of all Targets begins. Progress towards achievement of Targets before this date will not be counted, unless such progress is approved in writing by VDACS, in consultation with the Locality and Authority.

“Maintain” means that the New Jobs and FTEs created pursuant to the AFID Grant will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs and FTEs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in the Company’s employment levels (so long as there is active recruitment for open positions), (ii) strikes and (iii) other temporary work stoppages.

“New Job” means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are paid by the Company for the employee, and for which the Company pays an average annual wage of at least \$97,500. Average annual wage means the average annual salary of full-time positions at the Facility determined by dividing total payroll (of a type included in W-2 compensation) provided to full-time positions at the Facility by the number of full-time positions at the Facility. Each New Job must require a minimum of either (i) 35 hours of an employee’s time per week for the entire normal year of the Company’s operations, which “normal year” must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs.

“New Full-Time Equivalent Positions (FTEs)” are part-time and seasonal positions created by the project on a predictable, annual basis, which do not meet the definition of New Job, and for which the Company pays an average annual wage of at least \$50,000. For the purposes of the AFID Grant, these positions should be converted into New Full-Time Equivalent Positions (FTEs), based on one FTE equaling 1,680 hours per year.

“Performance Date” means December 31, 2023. If the Locality, in consultation with the Authority and VDACS, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, the Locality may agree to extend the Performance Date by up to 15 months. If the Performance Date is extended, the Locality shall send written notice of the extension to the Authority, the Company and the Secretary of Agriculture and Forestry and the date to which the Performance Date has been extended shall be the “Performance Date” for the purposes of this Agreement.

“Targets” means the Company’s obligations to make Capital Investments at the Facility of at least \$248,250, to create and Maintain at least two (2) New Jobs at an average annual wage of \$97,500 and three (3) FTEs at an average annual wage of \$50,000 at the Facility, and to use at least \$48,000 (or 30,000 pounds) of Virginia-Grown Agricultural and Forestal Products as defined in Appendix A, all as of the Performance Date.

“Virginia Code” means the Code of Virginia of 1950, as amended.

“Virginia-Grown Agricultural and Forestal Products” means crops, livestock, and livestock products, including field crops, fruits, vegetables, horticultural specialties, cattle, sheep, hogs, goats, horses, poultry, fur-bearing animals, milk, eggs, aquaculture, commercially harvested wild fish, commercially harvested wild shellfish, and furs, as well as, timber, pulpwood, posts, firewood, Christmas trees, and other tree and wood products for sale or for farm use, which are grown or produced in Virginia for commercial purposes and to which the Company adds value to at the Facility. The use of Virginia-Grown Agricultural and Forestal Products at the Facility must be in addition to the annual usage of these products in the year preceding the Grant Award Date.

Section 2. Targets.

The Company will develop and operate the Facility in the Locality, make a Capital Investment of at least \$248,250, create and Maintain at least two (2) New Jobs at an average annual wage of \$97,500 and three (3) FTEs at an average annual wage of \$50,000, and use: \$48,000 (or 30,000 pounds) of Virginia-Grown Agricultural and Forestal Products (see Appendix A), at the Facility, all as of the Performance Date. If the dollar amount of new purchases of Virginia-grown Agricultural and Forestal Products is not met, the Company can still achieve the purchase target by demonstrating they substantively achieved the same volume of Virginia-Grown Agricultural and Forestal Products they proposed in Appendix A.

The average annual wage of the New Jobs will be at least \$97,500.

The average annual wage of FTEs will be at least \$50,000.

The average prevailing wage in the locality in 2020 is \$88,584.

Section 3. Disbursement of AFID Grant.

(a) *Disbursement of the AFID Grant:* By execution and delivery of this Agreement, the Locality requests that the AFID Grant be disbursed to it. VDACS will promptly arrange for the payment of the \$25,000 AFID Grant to the Locality. Within 30 days of its receipt of the AFID Grant proceeds, the Locality will disburse the AFID Grant proceeds to the Authority. Within 30 days of its receipt of the AFID Grant proceeds, the Authority will disburse the AFID Grant proceeds to the Company.

The disbursement of the AFID Grant proceeds to the Company will serve as an inducement to the Company to achieve the Targets.

(b) *Use of the AFID Grant Proceeds:* The Company will use the AFID Grant proceeds to make building improvements, as permitted by Section 3.2-304(C) of the Virginia Code.

Section 4. Break-Even Point; State and Local Government Incentives.

(a) *State-Level Incentives:* VDACS has estimated that the Commonwealth will reach its “break-even point” by the Performance Date. The break-even point compares new revenues realized as a result of the Capital Investment and New Jobs at the Facility with the Commonwealth’s expenditures on incentives, including but not limited to the AFID Grant. With regard to the Facility, the Commonwealth expects to provide incentives in the following amounts:

<u>Category of Incentive:</u>	<u>Total Amount</u>
AFID Grant	\$25,000

The proceeds of the AFID Grant shall be used for the purposes described in Section 3.

(b) *Local-Level Incentives:* The Locality expects to provide the following incentives, as matching grants or otherwise, for the Facility by the Performance Date:

<u>Category of Incentive:</u>	<u>Total Amount</u>
Local Cash Grant	\$25,000

If, by the Performance Date, the funds disbursed or committed to be disbursed by the Locality to the Company total less than the \$25,000 AFID Grant awarded to the Company, minus any AFID funds to be repaid under Section 7(b), the Locality, subject to appropriation, will make an additional grant to the Company of the difference at the Performance Date.

The proceeds of the Locality’s Local Cash Grant may be used by the Company for any lawful purpose.

(c) *Other Incentives:* This Agreement relates solely to the AFID Grant. The qualification for, and payment of all State-Level Incentives and Local-Level Incentives, except for the AFID Grant,

will be governed by separate arrangements between the Company and the entities offering the other incentives.

Section 5. Company Reporting.

The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the Locality, the Authority and VDACS of the Company's progress on the Targets. Such progress reports will be provided annually, using a form provided by VDACS, beginning on January 31, 2022, and at such other times as the Locality, the Authority or VDACS may reasonably require. The first progress report will cover the period from September 30, 2020 to December 31, 2021, the second progress report will cover the period from January 1, 2022 to December 31, 2022 and the third and final progress report will cover the period from January 1, 2023 to December 31, 2023.

With each progress report, the Company shall report to VDACS (i) the amount of taxable expenditures made at the Facility for this project, (ii) the number of New Jobs and FTEs created and Maintained during the reporting period, (iii) the amount purchased and the purchase price paid by the Company, or the fair market value of the Virginia-Grown Agricultural or Forestal Products utilized, through the prior year. VDACS has represented to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Freedom of Information Act and that such information will be used by VDACS solely in calculating aggregate return on invested capital expenditures, New Jobs and FTEs created and Maintained, and use of Virginia-Grown Agricultural or Forestal Products for purposes of gauging the overall effectiveness of economic development incentives.

The Locality and Company agree to retain all books, records, data and other documents relative to this agreement for a period of three (3) years after the end of this agreement, or until audited by the Commonwealth of Virginia, whichever is sooner. VDACS and its authorized agents, and/or state auditors (both the Auditor of Public Accounts and/or VDACS Internal Auditor) shall have full access to and the right to examine any of said materials and records relating to this agreement during this period.

Section 6. Verification of Targets.

(a) *Verification of Capital Investment:* The Company must submit copies of fixed assets reports, business personal property tax filings, personal property tax assessment invoices, and real estate tax assessment invoices. The Company hereby authorizes the Locality, including the Locality's Commissioner of the Revenue and Treasurer, to release to VDACS the Company's real estate tax, business personal property tax and machinery and tools tax information. Such information shall be marked and considered confidential and proprietary and shall be used by VDACS solely for verifying satisfaction of the Capital Investment Target. If the Locality, the Office of the Commissioner of the Revenue or the Office of the Treasurer should require additional documentation or consents from the Company to access such information, the Company shall promptly provide, at the Company's expense, such additional documentation or consents as the Locality, the Authority, or VDACS may request. If the Company wishes to count as Capital Investments the capital expenditures made on its behalf by a lessor or a developer of the Facility, the Company is responsible for assembling and distributing the documentation necessary to verify the capital expenditures made on behalf of the Company.

In addition to the verification data described above, in the sole discretion of the Locality, the Authority, or VDACS, the Locality, the Authority, or VDACS, may each require such other documentation, including invoices, or audits as may be required to properly verify the Capital Investment.

(b) *Verification of New Jobs, FTEs and Wages:* VDACS will verify New Jobs, FTEs, and wages through the Virginia Employment Commission (VEC). If requested by VDACS, the Company shall provide to VDACS copies of the Company's Employer Quarterly Tax Report (Form FC 20) filings with VEC covering the period from the date of this Agreement through the Performance Date. The forms shall be marked and considered confidential and proprietary and shall be used by VDACS solely for verifying satisfaction of the New Jobs and FTEs Target. In accordance with the Virginia Code Section 60.2-114, VDACS is entitled to receive the Company's employment level and wage from the Virginia Employment Commission. If the Company wishes to (i) count as New Jobs employees of contractors, to the extent permitted in the definition of "New Jobs" in Section 1, (ii) the Company is responsible for assembling and distributing the documentation necessary to verify such New Jobs, including whether such jobs are net New Jobs in the Commonwealth.

For FTEs, the Company is responsible for assembling and distributing the documentation necessary to verify such positions, including individuals' names, hours worked, and salaries.

The Company agrees that it will report to VDACS with respect to its employees at a facility-level, rather than at the company-level.

In addition to the verification data described above, in the sole discretion of the Locality, the Authority, or VDACS, the Locality, the Authority or VDACS, may each require such other documentation or audits as may be required to properly verify the New Jobs.

(c) *Verification of use of Virginia-Grown Agricultural and Forestal Products:* The Company must provide to VDACS an accounting system generated report of the amount of Virginia-Grown Agricultural and Forestal Products purchased or used, including the purchase price paid by the Company, or the fair market value of the Virginia-Grown Agricultural or Forestal Products utilized, through the prior year. If the Company wishes to count as used the Virginia-Grown Agricultural and Forestal Products that is not directly purchasing or using, but is instead purchasing from another company which is making the Virginia-Grown Agricultural and Forestal Products, the Company is responsible for assembling and distributing the documentation necessary to verify these purchases.

In addition to the verification data described above, in the sole discretion of the Locality, the Authority, or VDACS, the Locality, the Authority, or VDACS, may each require such other documentation, including invoices, or audits as may be required to properly verify the use of Virginia-Grown Agricultural and Forestal Products.

Section 7. Repayment Obligation.

(a) *Determination of Inability to Comply:* If the Locality or VDACS determines at any time before the Performance Date (a "Determination Date") that the Company is unable or unwilling to meet and Maintain at least fifty (50) percent of its Targets by and through the Performance Date (i.e., by making a Capital Investment of at least \$124,125 at the Facility, to creating and Maintaining at least

one (1) New Job and one and one half (1.5) FTEs at the Facility, or purchasing at least \$24,000 (or 15,000 pounds) of Virginia-Grown Agricultural and Forestal Products by the Performance Date, and if the Locality or VDACS have notified the Company of such determination, the entire AFID Grant must be repaid by the Company to the Locality. Such a determination by the Locality or VDACS will be based on such circumstances as a written acknowledgement by the company, a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facility by the Company or other similar significant event that demonstrates the Company will be unable or is unwilling to satisfy the Targets for the AFID Grant.

(b) *Repayment of AFID Grant:* For purposes of repayment, the AFID Grant is to be allocated as \$8,333.33 (33%) for the Company's Capital Investment Target, \$8,333.33 (33%) for its New Jobs and FTEs Target, and \$8,333.34 (33%) for its purchase of Virginia-Grown Agricultural and Forestal Products. If the Company has met at least ninety percent (90%) of each of the three Targets at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion of the AFID Grant. If the Company has not met at least ninety percent (90%) of each of the three of its Targets at the Performance Date, the Company shall repay to the Locality that part of the AFID Grant that is proportional to the Target or Targets for which there is a shortfall. For example, if at the Performance Date, if the Company meets seventy-five percent (75%) of each performance target, the Company shall repay to the Authority twenty-five percent (25%) of the moneys allocated to the Capital Investment Target (\$2,083.33) plus, twenty-five percent (25%) of the moneys allocated to the New Jobs and FTEs Target (\$2,083.33), and plus twenty-five percent (25%) of the moneys allocated to the purchase of Virginia-Grown Agricultural and Forestal Products Target (\$2,083.34).

(c) *Repayment:* The Company shall be liable for any repayment of all or a portion of the AFID Grant, as described in this Section 7. ***Such repayment shall be due from the Company to the Locality within ninety days of the Performance Date or the Determination Date, as applicable.*** Any moneys repaid by the Company to the Locality hereunder shall be repaid by the Locality promptly to VDACS for redeposit into the AFID fund. The Locality and the Authority shall use their best efforts to recover all such funds, including legal action for breach of this Agreement. The Locality shall assume primary responsibility for filing and prosecuting any such legal action, and the Authority shall cooperate with the Locality's efforts. The Locality shall not have any responsibility for the repayment of any sums hereunder unless said sums have been received by the Locality from the Company.

(d) *Failure to Repay:* If the Company fails to repay AFID funds following a determination of its liability for repayment pursuant to this Section 7, VDACS may determine that further collection action is required and may refer the matter to the Office of the Attorney General (the "OAG") for collection pursuant to Section 2.2-518 of the Virginia Code. In such event, by their signatures below, the Locality and the Authority will be deemed to have assigned to the Commonwealth all of their rights, title and interest in and to this Section 7. In any matter referred to the OAG for collection, the Company shall be liable to pay interest, administrative charges, attorney fees and other applicable fees. Interest on any outstanding repayment referred to the OAG shall accrue at the rate set forth in Section 6.2-301 A. of the Virginia Code (currently 6.0% per year) for the period from the Performance Date or the Determination Date, as applicable, until paid.

Section 8. Notices.

Formal notices and communications between the Parties shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery, or (iv) delivery by facsimile or electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered by facsimile or email shall be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices and communications shall be addressed to:

if to the Company, to:

with a copy to:

Facsimile: _____
Email: _____
Attention: _____

Facsimile: _____
Email: _____
Attention: _____

if to the Locality, to:

with a copy to:

Department of Economic Initiatives
12000 Government Center Pkwy, Suite 432
Fairfax, VA 22035
Email: ssizer@fairfaxcounty.gov
Attention: Scott Sizer

Office of the County Attorney
12000 Government Center Pkwy, Suite 549
Fairfax, VA 22035
Email: patricia.mccay@fairfaxcounty.gov
Attention: Patricia McCay

if to the Authority, to:

with a copy to:

Fairfax County Economic Development
Authority
8300 Boone Blvd, Suite 450
Tysons, VA 22182
Email: CRiley@fceda.org
Attention: Catherine Riley

Facsimile: _____
Email: _____
Attention: _____

if to VDACS, to:

with a copy to:

Secretary of Agriculture and Forestry
Office of Governor
Commonwealth of Virginia
1111 East Broad Street
Richmond, Virginia 23219
Attention: AFID

Chauntele D. Taylor
AFID Compliance Coordinator
Va Dept. of Agriculture & Consumer Services
102 Governor St., Room 353
Richmond, Virginia 23219
Attention: AFID

Section 9. Miscellaneous.

(a) *Entire Agreement; Amendments.* This Agreement constitutes the entire agreement among the parties hereto as to the AFID Grant and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the Locality, the Authority and the Secretary of Agriculture and Forestry.

(b) *Governing Law; Venue.* This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the Locality and such litigation shall be brought only in such court.

(c) *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) *Severability.* If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

(e) *Attorney's Fees.* Except as provided in Section 7, attorney's fees shall be paid by the party incurring such fees.

(f) *Interpretation of language.* Any potential dispute in language shall be determined by VDACS or the Secretary of Agriculture and Forestry (Secretary). For any terms which any party to the Agreement might seek interpretation, the party or parties seeking interpretation must write VDACS or the Secretary describing the need for interpretation and any related context, factual or legal, which the party believes will aid the interpretation. When seeking interpretation, parties must notify all other parties to the Agreement of any interpretation request. Requests must indicate whether the other parties consent to the interpretation request. Parties that do not consent to requests may write their own requests for interpretation. All parties shall cooperate with the efforts made by VDACS and the Secretary in making any interpretations and such interpretations shall be conclusive and binding upon all parties to the Agreement.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

COUNTY OF FAIRFAX, VIRGINIA

By _____
Name: _____
Title: _____
Date: _____

**ECONOMIC DEVELOPMENT
AUTHORITY OF THE COUNTY OF
FAIRFAX, VIRGINIA**

By _____
Name: _____
Title: _____
Date: _____

**OM LASSI, LLC DBA OMMADE
PEANUT BUTTER**

By _____
Name: _____
Title: _____
Date: _____

APPENDIX A

Purchases of Virginia-Grown Agricultural and Forestal Products:

PROJECTED AGRICULTURE PURCHASES								
	Year 1 \$ Value	Year 1 Volume (pounds)	Year 2 \$ Value	Year 2 Volume (pounds)	Year 3 \$ Value	Year 3 Volume (pounds)	Total New \$ Value	Total New Volume (pounds)
Total of all Ag Product Purchases	\$16,000	10,000	\$48,000	30,000	\$96,000	60,000	\$160,000	100,000
Peanuts	\$16,000	10,000	\$48,000	30,000	\$96,000	60,000	\$160,000	100,000
Total Virginia Ag Product Purchases	\$4,800	3,000	\$14,400	9,000	\$28,800	18,000	\$48,000	30,000
Peanuts	\$4,800	3,000	\$14,400	9,000	\$28,800	18,000	\$48,000	30,000
Percentage that is Virginia Grown	30%	30%	30%	30%	30%	30%	30%	30%

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ACTION - 4

Approval of Memorandum of Understanding Between the Fairfax County Board of Supervisors and the Fairfax County Redevelopment and Housing Authority Regarding Implementation of the County's MS4 Program on FCRHA-Owned Property

ISSUE:

Fairfax County and Fairfax County Redevelopment and Housing Authority (FCRHA) share the common objective of achieving compliance with stormwater regulatory requirements and permitting obligations, as well as protecting water resources for the benefit of the residents of Fairfax County. Upon submittal of an executed agreement between the County and FCRHA, the discharge of stormwater from the Municipal Separate Storm Sewer System (MS4) owned and operated by FCRHA will be covered under the County's individual state permit.

RECOMMENDATION:

The County Executive recommends that the enclosed Memorandum of Understanding (MOU) between the Fairfax County Board of Supervisors and the Fairfax County Redevelopment and Housing Authority be approved by the Board. Implementation of a joint MS4 program by the County and FCRHA will improve program efficiency and simplify permit compliance. The MOU defines the roles and responsibilities of each entity for implementation of a joint MS4 program.

TIMING:

Board action is requested no later than November 17, 2020.

BACKGROUND:

Under the MS4 permit, the County is required to maintain and utilize the legal authority granted by the Commonwealth of Virginia to control discharges to and from the County's MS4. The Department of Public Works and Environmental Services (DPWES) is assigned the responsibility of ensuring compliance with the MS4 permit requirements and is responsible for the maintenance of the MS4 throughout the County. The Department of Housing and Community Development is currently responsible for the operations of FCRHA properties, and by extension the maintenance of stormwater facilities on those properties. Similar to existing agreements with Fairfax County Public Schools and Fairfax County Park Authority, DPWES will assume the maintenance of the stormwater facilities that are located on FCRHA properties as part of this MOU. In

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addition, the County will include mapping of the FCRHA MS4, identification of high priority facilities requiring development of a stormwater pollution prevention plan, identification of FCRHA land where nutrients (fertilizers) are applied to turf areas greater than one acre, and tracking of certified nutrient management plans for these lands. The execution of the enclosed MOU will strengthen the cooperative efforts between the two entities and allow for future opportunities that will enhance both programs. It should be noted that Public-Private Educational Facilities and Infrastructure Act properties that are owned and operated by private developers are not subject to this MOU.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1 - Memorandum of Understanding between the Fairfax County Board of Supervisors and the Fairfax County Redevelopment and Housing Authority

STAFF:

Rachel Flynn, Deputy County Executive
Randy Bartlett, Director, Department of Public Works and Environmental Services
Tom Fleetwood, Director, Department of Housing and Community Development

ASSIGNED COUNSEL:

Marc Gori, Assistant County Attorney

MEMORANDUM OF UNDERSTANDING
between the
FAIRFAX COUNTY BOARD OF SUPERVISORS, VIRGINIA
and the
FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY

This Memorandum of Understanding ("MOU") is entered into this ____ day of _____, 2020 by and between the Board of Supervisors of Fairfax County and the Fairfax County Redevelopment and Housing Authority ("FCRHA").

WHEREAS, the FCRHA is the legal owner of real property and the Department of Housing and Community Development ("DHCD") manages and coordinates operations of properties owned by FCRHA; and

WHEREAS, the County and the FCRHA share the common objective of achieving compliance with stormwater regulatory requirements and permitting obligations, as well as protecting water resources for the benefit of the residents of Fairfax County; and

WHEREAS, as part of the Clean Water Act as amended, the County and the FCRHA are subject to the Virginia Stormwater Management Act (§62.1-44.15:24 et seq, Code of Virginia), the Erosion and Sediment Control Act (§62.1-44.15:51 et seq, Code of Virginia), and the Chesapeake Bay Preservation Act (§62.1-44.15:67 et seq, Code of Virginia), and their attendant regulations; and

WHEREAS, the County operates a Municipal Separate Storm Sewer System ("MS4") as defined in the Virginia Stormwater Management Program ("VSMP") Regulation (9VAC25-870); and

WHEREAS, the discharge of stormwater from the MS4 owned and operated by the County is subject to an individual state permit (Permit No. VA0088587), which became effective April 1, 2015, expired March 31, 2020 and is administratively continued until a new permit is issued; and

WHEREAS, this MOU is necessary to ensure that FCRHA properties, excluding long-term leased properties operated by private enterprises through the Public-Private Educational Facilities and Infrastructures Act, within the County's MS4 Service area are maintained and operated in a manner that will ensure MS4 permit compliance.

NOW THEREFORE, the County and the FCRHA enter into this MOU to define the roles and responsibilities of each entity for implementation of the MS4 program immediately upon execution of this MOU.

MOU Between Fairfax County and Fairfax County Redevelopment and Housing Authority
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The following acronyms are used in this document:

DEQ..... Virginia Department of Environmental Quality
DHCD..... Department of Housing and Community Development
DPWES.....Fairfax County Department of Public Works and Environmental Services
FCRHA..... Fairfax County Redevelopment and Housing Authority
FRD..... Fire & Rescue Department
HP-SWPPP.... High Priority Stormwater Pollution Prevention Plan
IMP..... Integrated Management Plan
IPM..... Integrated Pest Management
LDS..... Land Development Services
MS4.....Municipal Separate Storm Sewer System
MSMDMaintenance & Stormwater Management Division, DPWES
NMP.....Nutrient Management Plan
PEPP.....Public Education and Participation Plan
PHF.....Pesticide, Herbicide, & Fertilizer
PMA.....Private Maintenance Agreement
PPEA.....Public-Private Educational Facilities and Infrastructures Act
SOP..... Standard Operating Procedure
STWStormwater Management, DPWES
SWPDStormwater Planning Division, DPWES
TMDL..... Total Maximum Daily Load
VPDES Virginia Pollutant Discharge Elimination System (DEQ)
VSMP.....Virginia Stormwater Management Program (DEQ)

RESPONSIBILITIES THAT WILL TAKE EFFECT IMMEDIATELY UPON EXECUTION OF THIS MOU:

County Permit Element (VA0088587)	FCRHA		County		Operational Considerations
	Lead	Activity	Lead	Activity	
General	<p>The Director, Property Improvement and Maintenance Division. The backup is the Director, Rental Services Division.</p>	<p>Provide County staff points of contact through which to coordinate roles, address issues, and make approvals annually.</p> <p>Allow County staff reasonable access to FCRHA properties to conduct activities required by the applicable MS4 permit.</p> <p>Follow established County SOPs applicable to MS4 activities.</p> <p>Implement the Fairfax County MS4 Program Plan. This may include providing adequate program funding, staffing and equipment maintenance to support program implementation.</p>	STW	<p>Provide FCRHA and DHCD staff points of contact through which to coordinate roles, address issues, and make approvals annually.</p> <p>Coordinate FCRHA property visits as needed with the authorized FCRHA office or management staff and provide reasonable notice for visits.</p> <p>All County activities on FCRHA properties must be conducted consistent with FCRHA rules and policies.</p> <p>Provide FCRHA/DHCD with electronic copies of all established County SOPs</p>	<p>DHCD will provide data for updates to the Fairfax County MS4 Program Plan within four weeks of a request by STW unless mutually agreed upon otherwise.</p> <p>STW will provide the draft Fairfax County MS4 Program Plan to DHCD for review with at least four weeks to provide comments.</p> <p>Exhibits:</p> <ol style="list-style-type: none"> 1. MS4 Permit 2. MS4 Program Plan 3. Framework for Municipal Separate Storm Sewer System Support of County Facilities

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County Permit Element (VA0088587)	FCRHA		County		Operational Considerations
	Lead	Activity	Lead	Activity	
				<p>applicable to MS4 activities.</p> <p>Establish a process to obtain FCRHA and DHCD input into the development and update of the Fairfax County MS4 Program Plan.</p>	
Planning (Section I.B.1)		<p>Coordinate the schematic design of all new FCRHA capital improvement projects with County staff to consider opportunities to provide stormwater management controls beyond what is required to comply with the technical criteria for regulated land disturbing activities and with any proffered conditions.</p>	STW	<p>Participate in the design of FCRHA/DHCD capital improvement projects by reviewing schematic site plans to identify opportunities to enhance stormwater controls on FCRHA owned and operated properties. Comments and suggested enhancements will be provided in a timely fashion.</p> <p>At the discretion of the County, fund and provide engineering</p>	<p>Ahmed Rayyan, the current POC at DHCD, and Catie Torgerson have been coordinating this permit element.</p>

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County Permit Element (VA0088587)	FCRHA		County		Operational Considerations
	Lead	Activity	Lead	Activity	
				support to FCRHA/DHCD to enhance stormwater management facilities constructed to meet MS4 Permit requirements that exceed County development standards.	
Construction Site Runoff and Post Construction Runoff from Areas of New Development and Development on Prior Developed Lands (Section I.B.2.a)		<p>Ensure that all land disturbing activities subject to the jurisdiction of Fairfax County comply with the Fairfax County Stormwater Management Ordinance and the Erosion and Sediment Control Ordinance (Chapters 124 and 104 of the Code of Fairfax County).</p> <p>Fund stormwater management facilities required to meet regulatory requirements and any proffered conditions.</p> <p>Compliance with the requirements laid out in the General VPDES Permit for Discharges of Stormwater</p>	LDS	<p>Implement actions identified in Section I.B.2.a of the permit.</p> <p>Review and inspect all FCRHA land disturbing activities subject to the jurisdiction of Fairfax County for compliance with the Fairfax County Stormwater Management Ordinance and the Erosion and Sediment Control Ordinance (Chapters 124 and 104 of the Code of Fairfax County).</p>	<p>Exhibits:</p> <p>4 .Fairfax County Stormwater Management Ordinance and the Erosion and Sediment Control Ordinance</p>

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County Permit Element (VA0088587)	FCRHA		County		Operational Considerations
	Lead	Activity	Lead	Activity	
		from Construction Activities is the responsibility of the construction permit holder.			
Retrofitting on Prior Developed Lands (Section I.B.2.b)	The Director, Design, Development, and Construction Division will serve as the point of contact on capital projects and PPEA properties. The Director, Property Improvement and Maintenance Division (the backup is the Director, Rental Services Division) will serve as the point of contact for	Designate point of contact to coordinate in the County's project selection and implementation process for any projects located on FCRHA property.	SWPD	Implement actions identified in Section I.B.2.b of the permit.	

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County Permit Element (VA0088587)	FCRHA		County		Operational Considerations
	Lead	Activity	Lead	Activity	
	properties owned and operated by the FCRHA.				
Roadways (Section I.B.2.c)		<p>Maintain a list of FCRHA maintained roads, streets, and parking lots with the information required in Section I.B.2.c of the permit.</p> <p>If required on FCRHA property, DCHD will implement the SOPs executed on June 26, 2019 for:</p> <ul style="list-style-type: none"> • Outdoor Material Storage, • Roadway and Parking Lot Construction and Maintenance, • Parking Lot and Street Sweeping, and • Vehicle and Equipment Repair and Maintenance 	MSMD	Implement actions identified in Section I.B.2.c of the permit.	<p>The MS4 team will work with Keith Appler to include the FCRHA-maintained properties in the list of permittee-maintained properties required in the Roadways section of the permit.</p> <p>Exhibits:</p> <p>5. Outdoor Material Storage SOP</p> <p>6. Roadway & Parking Lot Construction & Maintenance SOP</p> <p>7. Parking Lot & Street Sweeping SOP</p> <p>8. Vehicle & Equipment Repair & Maintenance SOP</p>
Pesticide, Herbicide, and		Develop and ensure implementation, either by FCRHA or a third party, of	SWPD	Implement actions identified in Section I.B.2.d of the permit.	DHCD will provide SWPD an updated inventory on the status and acreage of lands where NMPs

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County Permit Element (VA0088587)	FCRHA		County		Operational Considerations
	Lead	Activity	Lead	Activity	
Fertilizer Application (Section I.B.2.d)		<p>approved nutrient management plans (NMPs) for each FCRHA property where nutrients are applied to contiguous turf area greater than or equal to 1 acre.</p> <p>Implement Standard Operating Procedures for Pesticide, Herbicide, and Fertilizer for the application, storage, transport and disposal of pesticides, herbicides, and fertilizers.</p> <p>Track and annually report to SWPD the acres of FCRHA land upon which nutrients are applied and the NMP status.</p> <p>Track and annually report to SWPD the total number of acres managed under Integrated Pest Management (IPM) plans.</p>			<p>have been implemented by July 31 of each year.</p> <p>DHCD will provide SWPD documentation of acres managed under IPM plans by July 31 of each year.</p> <p>DHCD will provide SWPD documentation of implementation and enforcement mechanisms for SOPs or guidelines developed by SWPD for the application, storage, transport, and disposal of pesticides, herbicides, and fertilizers</p> <p>Exhibits:</p> <p>9.PHF SOP</p> <p>10.Nutrient Management Plan example</p> <p>11.MS4 Annual Report Appendix R7</p>

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County Permit Element (VA0088587)	FCRHA		County		Operational Considerations
	Lead	Activity	Lead	Activity	
Illicit Discharges and Improper Disposal (Section I.B.2.e)		<p>FCRHA staff should use the County’s Stormwater “Who to Call” list to report suspected illicit discharges</p> <p>Eliminate, within 30 days after discovery, the source of any suspected illicit discharge or improper disposal on FCRHA property. Where elimination of an illicit discharge within 30 days is not possible, DHCD will propose an expeditious schedule for removal of the discharge. In the interim, DHCD shall take all reasonable and prudent measures to minimize the discharge of pollutants to the MS4.</p>	SWPD	<p>Implement actions identified in Section I.B.2.e of the permit.</p> <p>Notify FCRHA of suspected illicit discharges from FCRHA properties.</p>	<p>Exhibits:</p> <p>12.Stormwater Who to Call list</p>
Spill Prevention and Response (Section I.B.2.f)		Report spills of hazardous materials to the Fire Marshal’s Office immediately. Report spills to supervisor and refer to the County’s Stormwater “Who to Call” list to report spills of non-hazardous materials	FRD	Implement actions identified in Section I.B.2.f of the permit.	

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County Permit Element (VA0088587)	FCRHA		County		Operational Considerations
	Lead	Activity	Lead	Activity	
		that have entered storm drains or streams.			
Industrial and High Risk Runoff (Section I.B.2.g)	N/A	N/A	SWPD	Implement actions identified in Section I.B.2.g of the permit.	
Stormwater Infrastructure Management (Section I.B.2.h)		<p>Provide the County full site plans and as-built drawings for all FCRHA stormwater management facilities.</p> <p>Provide additional information on new and existing stormwater management infrastructure to the County upon request and in a timely manner, or within one month of the initial request.</p> <p>Perform reasonable aesthetic maintenance of stormwater management facilities, including but not limited to: additional mowing beyond stormwater inspection requirements, maintenance of turf and vegetation,</p>	MSMD	<p>Implement actions identified in Section I.B.2.h of the permit.</p> <p>Maintain an accurate storm sewer system map and information tables for FCRHA properties in accordance with the permit.</p> <p>Inspect and maintain all storm sewers that serve through-drainage located on FCRHA property.</p> <p>Prepare and maintain an inventory of stormwater management facilities</p>	<p>FCRHA stormwater facilities currently being maintained by FCRHA will be transferred into the DPWES Maintenance and Stormwater Management Division (MSMD) routine maintenance program once the facilities are considered "functional."</p> <p>On an annual basis, MSMD will provide FCRHA with a list of stormwater management facilities that will be inspected and/or maintained in the upcoming year.</p> <p>The stormwater management facilities will be maintained per MSMD's Levels of Service guidelines. MSMD will provide FCRHA with four weeks' notice of anticipated non-routine maintenance work.</p>

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County Permit Element (VA0088587)	FCRHA		County		Operational Considerations
	Lead	Activity	Lead	Activity	
		<p>maintenance of fences, and litter collection.</p> <p>Damage, whether minor or major, to an MS4 stormwater facility on FCRHA property will be the responsibility of FCRHA to repair. FCRHA will initiate repairs within 45 days of notice from MSMD. If this is not corrected within 135 days of notice, MSMD will no longer maintain the facility and FCRHA will become responsible for all repairs and regular maintenance to the facility.</p>		<p>located on FCRHA property.</p> <p>Perform and track required stormwater management facility inspections in accordance with the schedule established in the Fairfax County MS4 Program Plan.</p> <p>Perform and track minor and major rehabilitation and repair needs as defined in County policies and procedures that are required to ensure proper operation of all FCRHA stormwater management facilities.</p>	<p>New stormwater management facilities that are installed on FCRHA land will automatically be incorporated into the MSMD inventory.</p> <p>Exhibit 3 (Framework for Municipal Separate Storm Sewer System Support of County Facilities) provides additional details regarding DPWES support for stormwater management facilities.</p>

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County Permit Element (VA0088587)	FCRHA		County		Operational Considerations
	Lead	Activity	Lead	Activity	
County Facilities (Section I.B.2.i)		<p>FCRHA will not discharge wastewater, vehicle wash water, or fluids leaked from FCRHA/DHCD vehicles into the MS4 without authorization from a separate VPDES permit and will not dump collected yard waste and grass clippings into the MS4 per the Stormwater Protection Policy.</p> <p>Allow DPWES to install markings on all stormwater inlets located on high priority FCRHA facilities and FCRHA facilities with greater than two acres of impervious surface.</p> <p>Apply for all necessary VPDES permits determined to be required by Virginia DEQ for FCRHA facilities.</p>	STW	<p>Implement actions identified in Section I.B.2.i of the permit.</p> <p>If needed, develop HP-SWPPPs, with review and approval by FCRHA/DHCD, for FCRHA facilities that are determined to be high priority.</p>	<p>DHCD will provide SWPD documentation of implementation and enforcement mechanisms for wastewater, DHCD vehicle wash water, yard waste, grass clipping, and vehicle leak requirements.</p> <p>If any FCRHA facilities are determined to be high priority, DHCD will provide data for HP-SWPPP development within three weeks of a request by STW unless mutually agreed upon otherwise.</p> <p>DHCD will provide access to all sites for County inspection as necessary for HP-SWPPP development.</p> <p>STW will provide draft HP-SWPPPs to DHCD for review at least six weeks in advance of the scheduled due date.</p> <p>DHCD will review draft HP-SWPPPs within three weeks of a request by STW.</p> <p>STW will provide financial and/or contractor support for structural projects (source control</p>

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County Permit Element (VA0088587)	FCRHA		County		Operational Considerations
	Lead	Activity	Lead	Activity	
					<p>or stormwater management) required to implement HP-SWPPPs on DHCD properties per support matrix memo.</p> <p>Exhibits:</p> <p>13.Stormwater Protection Policy</p>
Public Education (Section I.B.2.j)	Public Affairs Manager, Policy and Compliance Division.	<p>The Public Affairs Manager will participate in the development of an MS4 public education and outreach plan.</p> <p>Ensure the implementation of items in MS4 public education participation plan (PEPP) where DHCD is identified as a responsible party.</p> <p>Track and report to SWPD annually a list of all public</p>	SWPD	<p>Implement actions identified in Section I.B.2.j of the permit.</p> <p>Maintain a list of FCRHA educational programs in the public education and outreach plan developed by the MS4 Coordination Section in partnership with the DHCD</p>	<p>DHCD will provide STW with a list of public education and outreach efforts and education activities and the estimated number of individuals reached through the activities no later than July 31 of each year.</p> <p>Exhibits:</p>

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County Permit Element (VA0088587)	FCRHA		County		Operational Considerations
	Lead	Activity	Lead	Activity	
		education and outreach efforts completed in accordance with the MS4 PEPP, including an estimate of the population reached for each effort.		Public Affairs Manager.	14.MS4 Annual Reporting RE: Public Education and Outreach (See Appendix R13)
Training (Section I.B.2.k)	Property Improvement and Maintenance Division	Require appropriate staff to complete the MS4 Good Housekeeping and Reporting and Recognition of Illicit Discharges trainings on a biennial basis. Annually provide confirmation that DHCD employees and contractors applying pesticides and herbicides are properly certified per the Virginia Pesticide Control Act (§3.2-3900 et seq, Code of Virginia).	SWPD	Implement actions identified in Section I.B.2.k of the permit. Provide DHCD access to County training programs or materials that will meet permit training requirements.	By October 1 of each year, SWPD will provide DHCD with a link to the MS4 training materials. By December 31 of each year, DHCD will provide SWPD its plan for how DHCD personnel or contractors will complete required training using either available County training or County training materials. If either training is completed in person, FCRHA will report the training date(s), the event(s), and the estimated number of individuals attending each training event. DHCD will provide training and certification documentation to SWPD no later than July 31 of each year.

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County Permit Element (VA0088587)	FCRHA		County		Operational Considerations
	Lead	Activity	Lead	Activity	
Water Quality Screening Programs (Section I.B.2.l)		FCRHA properties will be available to monitoring staff and contractors Monday through Friday, from 7 AM to 5 PM, unless otherwise arranged with the on-site property manager, as needed. SWPD staff and/or contractors will be allowed on site to conduct monitoring during these times without issuance of additional FCRHA land rights or permits.	SWPD	Implement actions identified in Section I.B.2.l of the permit. Any suspected illicit discharge from FCRHA property will be reported to FCRHA for source identification and elimination.	
Infrastructure Coordination (Section I.B.2.m)		N/A	SWPD	Implement actions identified in Section I.B.2.m of the permit.	
Monitoring Requirements (Section I.C)		N/A	SWPD	Implement actions identified in Section I.C of the permit.	

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County Permit Element (VA0088587)	FCRHA		County		Operational Considerations
	Lead	Activity	Lead	Activity	
TMDL Action Plan and Implementation (Section I.D)		<p>Review the TDML Action Plans prepared by the County.</p> <p>Implement County TMDL action plans in accordance with the actions specified in the individual plans.</p>	SWPD	<p>Implement actions identified in Section I.B.D of the permit.</p> <p>Fund and construct stormwater retrofit projects on FCRHA property in accordance with TMDL action plans and prepare TMDL Action Plans.</p>	<p>DHCD will provide data for TMDL action plans within four weeks of a request by SWPD unless mutually agreed upon otherwise.</p> <p>FCRHA will review draft TMDL action plans within four weeks of a request by SWPD.</p> <p>Exhibits:</p> <p>15.Chesapeake Bay TMDL Action Plan</p>
Annual Reporting (Section I.E)		<p>Provide information required by the County to prepare annual reports in accordance with a schedule developed by SWPD. Such information may include confirmation that SOPs have been implemented, reports of Nutrient Management Plans that have been implemented, number of employees that have completed trainings, updated list of FCRHA-maintained properties, and public</p>	SWPD	<p>Implement actions identified in Section I.B.E of the permit.</p> <p>Provide FCRHA with a list of information required by the County to prepare annual reports, including when the information is needed to facilitate timely review.</p>	<p>SWPD will provide DHCD with a list of information required no later than July 1 of each year.</p> <p>DHCD will provide data for the annual report by August 1 of each year or as defined in the list of information required provided by SWPD.</p>

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County Permit Element (VA0088587)	FCRHA		County		Operational Considerations
	Lead	Activity	Lead	Activity	
		education & outreach events and opportunities.			

DRAFT

DURATION, MODIFICATION, TERMINATION, AND ANNUAL REVIEW:

This MOU shall remain in effect unless modified or terminated, as set forth below. Any modifications shall be in writing and signed by both parties. Either party may terminate this MOU with 180 days advance written notice to the other. To conform to local government charter and Code of Virginia requirements, the funding provisions of the MOU will be subject to annual review and appropriation as appropriate. The parties shall meet once per year on or about the anniversary of the date of this MOU, but no more than ten (10) business days after such anniversary date, for the purpose of reviewing the extent to which the terms of this MOU are being implemented successfully by the parties.

OPERATIONAL AGREEMENTS:

Operational agreements designed to facilitate the efficient and orderly implementation of this MOU, provided that they are not in conflict with the provisions contained herein, may be entered into between the Director of the Fairfax County Department of Public Works and Environmental Services and the Director of the Fairfax County Housing and Community Development.

CONFLICT RESOLUTION:

The terms, conditions, and covenants herein constitute the entire agreement and supersede all prior discussions, understandings, agreements, and negotiations between the parties hereto with respect to MS4 permit compliance activities. This MOU shall be governed by and construed and interpreted in accordance with the laws of the Commonwealth of Virginia, without regard to principles of conflicts of laws. Both parties participated in the preparation of the MOU, and no terms or interpretation of the MOU shall be construed against either party. Any dispute arising from the MOU, including but not limited to the scope of responsibilities assigned to the parties, and the discharge of same, shall be resolved at the appropriate staff level whenever possible. Any dispute that cannot be resolved at the staff level will be brought before the Directors of the Fairfax County Departments of Public Works and Environmental Services and Housing & Community Development for resolution. All requests, proposals, notices and other communication hereunder shall be in writing unless otherwise specified herein.

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IN WITNESS THEREOF, the DPWES Director and the FCRHA Director hereby execute this agreement:

Bryan Hill
County Executive
Fairfax County, Office of the County Executive

(Date)

Tom Fleetwood
Assistant Secretary
Fairfax County Redevelopment and Housing Authority

(Date)

DRAFT

ACTION - 5

Authorization to Enter into an Interim Agreement with Alpine-X LLC for Fairfax Peak Development at I-95 Lorton Landfill (Mount Vernon District)

ISSUE:

Board of Supervisors (Board) authorization of the County Executive to enter into an Interim Agreement between the Board and Alpine-X LLC regarding the an indoor ski facility and related development on the I-95 Lorton landfill, located on Fairfax County Tax Map 113-1 ((1)), Parcel 14 (the Site).

RECOMMENDATION:

The County Executive recommends that the Board authorize the County Executive to enter into an Interim Agreement with Alpine-X LLC.

TIMING:

Board action is requested to allow County Executive to enter an Interim Agreement with Alpine-X LLC in November 2020.

BACKGROUND:

On December 21, 2018, Alpine-X LLC (Developer) submitted an unsolicited proposal (Proposal) to the County for the redevelopment of portions of the Board-owned I-95 Lorton landfill, pursuant to the Public Private Education Facilities and Infrastructure Act of 2002, Virginia Code Ann. §§ 56-575.1 et seq., as amended (PPEA).

The Proposal named the project “Fairfax Peak” and generally envisions the construction of an indoor ski facility, hotel and commercial development, and other complimentary recreational facilities (Project), as listed below:

- Multiple ski slopes, inside a structure, at approximately a 20-degree angle, including a slope compliant with the Fédération Internationale de Ski’s standards, ensuring it can be used for competitions;
- A specially designed area for skiing and snowboarding with a variety of ramps, jumps, rails, boxes and other features, capable for use in national snowboarding and freestyle skiing competitions;
- A bunny slope for beginners, snow tubing run and area for skiers and snowboarders to perform tricks;

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- Restaurants, ski shop and dining terrace at the summit;
- A 100-plus room hotel at the base of the indoor snow facility;
- A gravity-powered, mountain coaster that will slide from the summit to Occoquan Regional Park; and,
- A ropes course and other outdoor activity areas.

The proposal also envisions other amenities that could be added in the future, including a water park, a “gravity ropes course” and passive recreation areas. Additional detail on the Project scope can be found online (Attachment 1).

In May 2019, the County accepted the Proposal for review and, pursuant to the PPEA, issued a “Request for Competing Proposals” (RCP). The RCP sought competing proposals for the development of recreational uses on portions of the Property. The County did not receive any responses to the RCP that were determined as responsive.

Due to the complexity of the Project, the Developer needs to perform feasibility and other studies to confirm the construction viability of the Project. To that end, the County approved a Right of Entry Agreement on May 11, 2020 (“ROE”) to permit the Developer and its contractors to enter onto portions of the Property and to perform limited initial due diligence work on the site through December 31, 2020.

The proposed Interim Agreement (Attachment 2) establishes certain additional terms to allow the Developer to advance its due diligence for the Project. Those include:

- Extends the term of the ROE until December 31, 2021.
- Confirms the potential area of study for the Project (Attachment 3);
 - The Agreement also allows – upon mutual agreement of the County and the Developer – to expand the study area to the remainder of Parcel 14 as well as the adjacent Parcel 15.
- Provides an exclusive negotiation period in which the County agrees to not convey nor lease any portion of the Project Area to a third party before December 31, 2021;
 - The County and the Developer may mutually agree to extend the exclusive period, as well as the ROE term, for up to one year, through December 31, 2022.
 - The Developer also acknowledges the County is considering the use of land adjacent to the Project for a solar power generation facility.

Future development of the project will be contingent on the Developer successfully achieving future regulatory review and permission for the Project, which will include any required land use entitlements and state regulatory requirements, which are not

Board Agenda Item
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included in the scope of the proposed Interim Agreement and no rights to apply for these are granted to the Developer at this time under the Interim Agreement.

The Board of Supervisors authorized the Public Hearing on September 15, 2020, with the Public Hearing being held on October 6, 2020. Public comments were accepted to be included in the record until November 10, 2020.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:

Attachment 1 – Alpine-X Unsolicited PPEA Proposal can be found online at:

<https://www.fairfaxcounty.gov/procurement/ppea/fairfaxpeak/alpinproposal>

Attachment 2 – Interim Agreement between Board of Supervisors and Alpine-X LLC

Attachment 3 – Extent of Area within the Interim Agreement

STAFF:

Rachel Flynn, Deputy County Executive

Randy Bartlett, Director, Dept. of Public Works and Environmental Services (DPWES)

Rebecca Moudry, Director, Department of Economic Initiatives

John Kellas, Deputy Director, Solid Waste Management, DPWES

Eric Forbes, Division Director, Solid Waste Compliance, DPWES

Scott Sizer, P3/Joint-Venture Policy Coordinator, Department of Economic Initiatives

Chase Suddith, Management Analyst, Department of Economic Initiatives

ASSIGNED COUNSEL:

Cynthia Bailey, Deputy County Attorney

Ryan Wolf, Assistant County Attorney

INTERIM AGREEMENT

THIS **INTERIM AGREEMENT** (“Agreement”) is made this ___ day of November, 2020 (“Effective Date”), by and between the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (“County”), and **ALPINE-X LLC**, a Virginia limited liability company (“Developer”; together with the County, the “Parties”).

RECITALS

- R-1. The County is the fee simple owner of an approximately 490-acre parcel of land located in Fairfax County, Virginia, having Fairfax County Tax Map # 113-1 ((1)), parcel 14 and further described on Exhibit A (“Parcel 14”) and an adjacent, approximately 418-acre parcel of land located in Fairfax County, Virginia, having Fairfax County Tax Map # 113-1 ((1)), parcel 15 and further described on Exhibit B (“Parcel 15”; together with Parcel 14, the “Property”).
- R-2. The County acquired the Property, together with other property, from the federal government, acting through the General Services Administration (“GSA”) pursuant to that certain Quitclaim Deed dated July 11, 2002, and recorded among the Fairfax County land records in Deed Book 13112, at Page 2169 (the “GSA Master Deed”).
- R-3. The County currently uses Parcel 14 as the I-95 Landfill Complex and has ground leased the majority of Parcel 15 to the Northern Virginia Regional Park Authority (“NVRPA”) for use as a regional park, pursuant to that certain Deed of Ground Lease, dated December 22, 2010 and recorded among the Fairfax County land records in Deed Book 21521 at Page 1147 (as such lease may be amended from time to time, the “NVRPA Lease”).
- R-4. On December 21, 2018, Developer submitted an unsolicited proposal to the County for the redevelopment of portions of the Property (the “Proposal”), pursuant to the Public Private Education Facilities and Infrastructure Act of 2002, Virginia Code Ann. §§ 56-575.1 et seq., as amended (“PPEA”). The Proposal preliminarily named the project “Fairfax Peak” and generally envisioned the construction of an indoor ski facility and related hotel and commercial space, as well as other recreational facilities, such as a wave pool, a ropes course, and zip lines (collectively, the “Project”).
- R-5. In May of 2019, the County formally accepted the Proposal for review. Pursuant to the PPEA, the County then issued a “Request for Competing Proposals” also in May of 2019 (the “RCP”). The RCP sought competing proposals for the development of recreational uses on portions of the Property. The County did not receive any responsive responses to the RCP.
- R-6. The Parties entered into that certain Right of Entry Agreement on May 11, 2020 (“ROE”) to permit the Developer and its contractors to enter onto portions of the Property and to perform certain initial due diligence work on the site.

R-7. The Parties desire to enter into this Agreement to initiate certain additional actions, set forth below, in furtherance of the Proposal and the Project and the negotiations conducted to date. In recognition of the complexity of the Proposal and the Project, the Parties wish to begin these efforts prior to entering into a final Comprehensive Agreement pursuant to the PPEA.

NOW, THEREFORE, in consideration of the mutual promises in this Agreement, and other valuable consideration, the receipt and legal sufficiency of which are acknowledged by the Parties, the Parties agree to the following:

Section 1: Property & Project Area.

- A. Project Area. The development area for the Project will be limited to those portions of the Parcel 14 as described on Exhibit C (the “Project Area”). The Parties may agree in writing to expand the Project Area to the remainder of Parcel 14 and/or – with the consent of NVRPA, to the extent required by the NVRPA Lease – some or all of Parcel 15.
- B. Solar Project. The Developer acknowledges that the County is considering the possibility of developing land adjacent to the Project Area (and/or potentially portions of the Project Area) as a solar power generation facility (the “Solar Project”), as further described in the Landfill Solar Feasibility Memo from HDR Engineering, Inc., dated July 3, 2019 (the “Solar Memo”), and that Developer has received a copy of the Solar Memo from the County. In designing the Project, the Developer will not seek any easements or other rights through the Solar Project area, except as may be specifically approved by the County in writing. In designing the Solar Project, the County reserves the right to locate the Solar Project and/or easements or other rights supporting the Solar Project through the Project Area. The County will provide regular updates on the Solar Project to the Developer and promptly notify the Developer of any potential encroachments of the Solar Project onto the Project Area.
- C. NVRPA Lease. The County has leased a portion of Parcel 15 to NVRPA pursuant to the NVRPA Lease. Developer acknowledges that it has received a copy of the NVRPA Lease and that, except for certain limited development rights retained by the County, it will need to obtain NVRPA’s approval for any portion of the Project to be located on land subject to the NVRPA Lease. The Parties agree to coordinate on outreach to NVRPA regarding the Project.
- D. DEQ Coordination. Developer acknowledges that the Project will require the Virginia Department of Environmental Quality (“DEQ”) to approve a “Major Permit Modification” for the Property. The Parties agree to coordinate on outreach to DEQ regarding the Project.
- E. GSA Master Deed. Developer acknowledges that the Property is subject to the GSA Master Deed. The Parties agree to coordinate on outreach to the applicable entities regarding the Project as may be required by the GSA Master Deed.

Section 2: Exclusive Negotiation Period.

- A. **No County Transfer.** Except as permitted in Section 2(A)(i) below, the County will neither convey or lease nor agree to convey or lease any portion of the Project Area to a third party before December 31, 2021 (the “Outside Date”), without the prior written consent of the Developer.
- i. Notwithstanding Section 2(A), the County may (a) convey such interests in the Project Area as are reasonably necessary in connection with the Solar Project, as discussed in Section 1(B) above, (b) so long as the term of such agreement is not extended past March 1, 2023, agree to allow the Northern Virginia Radio Control Club (the “Airplane Club”) the use of the runway, “pits area”, and parking area identified in that certain “Memorandum of Agreement-RC Model Aircraft Use at the I-95 Sanitary Landfill”, dated February 23, 2015 (collectively, the “Airplane Area”) for radio controlled airplane uses, and (c) convey such interests in the Project Area as may be reasonably necessary in connection with the operation of the landfill.
 - ii. The County and the Developer may mutually agree to extend the Outside Date for up to one year (i.e., up to December 31, 2022), neither party being under any obligation to do so.
- B. **Exclusive Negotiation Period.** The County will not negotiate with any third party regarding the development of the Project Area until December 31, 2021. For purposes of this Section 2(B), “the County” means each of Scott Sizer, P3 / Joint-Ventures Policy Coordinator, Office of Economic Initiatives; John Kellas, Deputy Director of Solid Waste Management, Department of Public Works and Environmental Services; and Jose Comayagua, Director, Department of Facilities Management.
- C. The Parties intend to negotiate in good faith to reach subsequent agreements regarding the actual development of the Property. Neither the County nor the Developer, however, is under no obligation to enter into any subsequent agreement. It is anticipated that further development of the Project will involve at least two separate additional agreements. The first agreement, which is anticipated to be an amendment to this Agreement (“Second Interim Agreement”), will address the pursuit of the land use actions for the Project. While land use approvals are pursued under the terms of the Second Interim Agreement, the Parties will negotiate in good faith to reach a Comprehensive Agreement for the actual physical implementation of the redevelopment. The Second Interim Agreement and the Comprehensive Agreement (which may consist of one or more contracts) will be presented to the Board of Supervisors for approval in accordance with the provisions of the PPEA.

Section 3: Developer Diligence Work in Project Area.

- A. **ROE.** The ROE is attached to this Agreement as Exhibit D and remains in full force and effect in accordance with its terms, except (i) that its term shall be extended to the

Outside Date (as may be extended pursuant to Section 2(A)(ii)), and (ii) in accordance with Section 3(B) of this Agreement.

- B. Coordination with Airplane Club regarding Airplane Area. Notwithstanding anything in the ROE, the Developer will use reasonable efforts to avoid performing Feasibility Studies in the Airplane Area. If the Developer nonetheless determines that it must perform one or more of the Feasibility Studies in the portion of the Airplane Area that is within the Project Area, it will provide the County with at least seven (7) business days' advance notice. The Developer acknowledges that if Developer is required by the ROE to restore any portion of the Airplane Area that is within the Project Area to its pre-existing condition following a Feasibility Study, that the pre-existing condition of such area (e.g., runway) may be different than elsewhere on the Project Area site.

Section 4: Notice.

- A. Except as set forth in Paragraph 3 of the ROE, all notices, demands or other communications sent under this Agreement ("Notice") must be in writing. Notices must be given by (i) personal delivery or (ii) a nationally recognized, next-day courier service, addressed as follows:

If to the County:

Fairfax County Department of Public Works & Environmental Services
12000 Government Center Parkway, Suite 548
Fairfax, VA 22035
Attention: John Kellas, Director of Solid Waste & Recycling
john.kellas@fairfaxcounty.gov

With a copy to:

Fairfax County Facilities Management Department
12000 Government Center Parkway, Suite 424
Fairfax, VA 22035
Attention: Michael Lambert, Assistant Director
michael.lambert@fairfaxcounty.gov

and

Office of the County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035
Attention: County Attorney
ryan.wolf@fairfaxcounty.gov

If to the Developer:

Niels ten Berge
1308 Vincent Place
McLean, VA 22101
Niels@alpine-X.com

and:

Brad Ryan
1308 Vincent Place
McLean, VA22101
Brad@alpine-X.com

With a copy to:

Cooley LLP
11951 Freedom Drive, Suite 1400
Reston, VA 20190
Attention: Mark C. Looney
mlooney@cooley.com

- B. A Notice given in accordance with this Agreement will be effective upon receipt or refusal by the Party to which it is given.
- C. For convenience, Notices may be sent via email; however, such email Notice will not be considered effective until the original Notice is received by the Party to which it is given pursuant to one of the delivery methods described in Section 11(a) above.
- D. Either Party may change its Notice address from time to time by informing the other Party in writing of such new address.

Section 5: Miscellaneous.

- A. Entire Agreement. This Agreement, together with its Recitals and the attached Exhibits, all of which are incorporated by reference, is the entire agreement between the Parties. The terms of this Agreement may be amended or modified only by a written instrument executed by the Parties.
- B. Severability. If any provision of this Agreement or its application to any party or circumstances is determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, will not be affected, and each provision of this Agreement will be valid and will be enforced to the fullest extent permitted by law.
- C. Applicable Law. This Agreement and any dispute, controversy, or proceeding arising out of or relating to this Agreement (whether in contract, tort, common or statutory law, equity

or otherwise) will be governed by Virginia law, without regard to conflict of law principles of Virginia or of any other jurisdiction that would result in the application of laws of any jurisdiction other than Virginia.

- D. Venue. All claims and litigation arising out of or related to this Agreement must be brought and resolved in the courts of the Commonwealth of Virginia located in the County of Fairfax, Virginia, or U.S. District Court for the Eastern District of Virginia, Alexandria Division.
- E. Assignability. The Developer does not have the right to assign this Agreement. An “assignment” for purposes of this Section 5(E) will include any change in the direct or indirect control of the Developer.
- F. Captions; Interpretation. The captions of this Agreement are for reference only and do not describe the intent of this Agreement or otherwise alter the terms of this Agreement. When a reference is made in this Agreement to an Article, a Section, or an Exhibit, such reference is to an Article of, a Section of, or an Exhibit to this Agreement. Whenever the words “include,” “includes,” or “including” are used in this Agreement, they will be deemed to be followed by the words “without limitation.” The definitions contained in this Agreement are applicable to the singular as well as to the plural forms of such terms and to the masculine, feminine, and non-genders of such terms. Whenever the context requires, any pronouns used in this Agreement include the corresponding masculine, feminine, or non-gender forms.
- G. No Partnership. Nothing contained in this Agreement will be construed to create a partnership or joint venture between the Parties or their successors or permitted assigns.
- H. Time of Essence. Time is of the essence with respect to the performance of the obligations of the Parties under this Agreement.
- I. Counterparts and Distribution. This Agreement may be executed and delivered in any number of counterparts, in the original or by electronic transmission, each of which so executed and delivered will be deemed to be an original and all of which will constitute one and the same instrument.
- J. Waiver. No waiver of any breach of this Agreement will be deemed a waiver of any preceding or succeeding breach under this Agreement or any other agreement. No extension of time for the performance of any obligation or act will be deemed an extension of time for the performance of any other obligation or act.
- K. Business Days. If any date set forth in this Agreement for the performance of any obligations by the Parties or for the delivery of any instrument or notice falls on a Saturday, Sunday, Legal Holiday, or day in which Fairfax County governmental offices are closed, the compliance with such obligations or delivery will be deemed acceptable on the next business day following such Saturday, Sunday, Legal Holiday, or closing. The term “Legal

Holiday” will mean any Fairfax County, Commonwealth of Virginia, or federal holiday on which post offices are closed in Virginia.

- L. Waiver of Jury Trial. The Parties each waive all rights to a trial by jury in any claim, action, proceeding or counterclaim arising out of or in any way connected with this Agreement.

- M. Disclosure of Materials and Studies. Unless approved in writing by the County, the Developer may not sell or give to any individual or organization (exempting the Developer’s consultants, partners, and agents involved in the Project and its design) any information, reports, or other materials given to, prepared or assembled by the Developer or its consultants under this Agreement or otherwise publicize Developer’s role and involvement with the Property. Any public announcement of the proposed Project must be fully coordinated with the County.

- N. Americans with Disabilities Act.
 - 1. Fairfax County Government is fully committed to the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities, and services. Fairfax County government contractors, subcontractors, vendors, and suppliers are subject to this ADA policy. The Developer must make the same commitment and the Developer’s execution of this Agreement is an express acknowledgement of the Developer’s commitment and compliance with ADA.

 - 2. Fairfax County is committed to a policy of nondiscrimination in all County programs, services, and activities and will provide reasonable accommodations upon request. Anyone requesting special accommodations should call the Department ADA representative at 703-324-3201 or TTY 1-800-828-1140. Please allow seven working days in advance of the event to make the necessary arrangements.

- O. Authorization to Conduct Business in the Commonwealth. In accordance with mandatory County policy, the Developer shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. The Developer shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of this Agreement. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this Section.

- P. Drug Free Workplace. During the performance of this Agreement, the Developer agrees to (i) provide a drug-free workplace for the Developer’s employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or

use of a controlled substance or marijuana is prohibited in the Developer's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Developer that the Developer maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this Section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to the Developer in accordance with this Section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Agreement.

- Q. Immigration Reform and Control Act. The Developer agrees that it does not, and shall not during the performance of this Agreement in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.
- R. Survival. All representations, warranties, and indemnities contained in this Agreement or in any instrument, document, or agreement delivered pursuant to this Agreement will survive termination of this Agreement unless otherwise provided herein.

Signatures appear on the following page.

[Signature Page to Interim Agreement – Fairfax Peak]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

COUNTY:

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA,
a body corporate and politic

By: _____
Name:
Title:

DEVELOPER:

ALPINE-X LLC,
a Virginia limited liability company

By: _____
Name:
Title:

EXHIBIT A – PARCEL 14

Please see the attached document.



GENERAL CIVIL
TRANSPORTATION
ENVIRONMENTAL
GEOGRAPHIC SCIENCES

January 10, 2002

**METES AND BOUNDS DESCRIPTION OF
PARCEL "H"
LORTON CORRECTIONAL COMPLEXES (LCC)
PLAT OF DIVISION
BASED ON THE BOUNDARY SURVEY PREPARED BY
GREENHORNE & O'MARA, INC.
MOUNT VERNON DISTRICT
FAIRFAX COUNTY, VIRGINIA**

Beginning at a corner to the lands of George M. Neall II, Trustee ~ Deed Book 7139 at Page 1987, said point also being the northwest corner of Lot 27, Section 1, Shirley Acres ~ Deed Book 966 at Page 128, and a corner of Parcel "E" of the Plat of Division; thence departing said lands of George M. Neall II, Trustee, and said Parcel "E", and with said Shirley Acres, Section 1, and then with the lands of Edward Katz, Trustee, ~ Deed Book 7198 at Page 1068, and then with the lands of Furnace Associates, Inc. ~ Deed Book 4777 at Page 164,

South 03°09'19" East, a distance of 1899.18 feet (passing through a found concrete monument at 343.62 feet, through a found concrete monument at 693.62 feet, through a found concrete monument at 1099.25 feet, and through a found concrete monument at 1499.13 feet) to a point, said point being South 60°39'16" East, 2.00 feet from a twin Maple tree; thence continuing with said lands of Furnace Associates, Inc.

South 37°21'19" West, a distance of 2387.36 feet (passing through a set concrete monument at 600.00 feet, through a set concrete monument at 1195.74 feet, through a found concrete monument at 1242.11 feet, through a found concrete monument at 1422.24 feet, and through a found concrete monument at 1922.24 feet) to an iron pipe set, said pipe being a corner to Parcel "T" of the Plat of Division; thence departing the lands of Furnace Associates, Inc. and with the lands of said Parcel "T" the following thirty four (34) courses and distances:

North 55°56'38" West, a distance of 271.77 feet; thence
South 37°54'47" West, a distance of 295.00 feet; thence
North 52°30'56" West, a distance of 229.91 feet; thence
South 88°23'40" West, a distance of 520.61 feet; thence
South 24°59'42" West, a distance of 1418.18 feet; thence
South 47°46'12" East, a distance of 480.18 feet; thence
South 37°20'28" West, a distance of 42.32 feet; thence
South 52°24'19" East, a distance of 57.08 feet; thence

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11211 Waples Mill Road • Fairfax, Virginia 22030 • Phone: 703.385.9800 • Fax: 703.385.5721
www.G-and-O.com

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Lorton Correctional Complexes (LCC)
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North 37°51'08" East, a distance of 41.01 feet; thence
South 37°16'07" East, a distance of 28.10 feet; thence
South 20°08'55" West, a distance of 543.64 feet; thence
South 67°27'15" West, a distance of 533.64 feet; thence
North 50°35'38" West, a distance of 91.54 feet; thence
North 74°44'56" West, a distance of 545.00 feet; thence
South 84°42'12" West, a distance of 538.01 feet; thence
South 07°27'10" West, a distance of 256.37 feet; thence
North 79°31'19" West, a distance of 300.26 feet; thence
North 08°45'40" East, a distance of 166.22 feet; thence
South 80°24'03" West, a distance of 212.78 feet; thence
South 76°40'38" West, a distance of 54.54 feet; thence
South 67°24'52" West, a distance of 98.52 feet; thence
South 19°26'56" West, a distance of 45.63 feet; thence
South 62°32'56" West, a distance of 71.18 feet; thence
North 54°36'03" West, a distance of 139.55 feet; thence
South 85°11'41" West, a distance of 63.29 feet; thence
North 43°07'53" West, a distance of 357.74 feet; thence
North 14°48'40" West, a distance of 364.50 feet; thence
North 03°49'08" East, a distance of 539.91 feet; thence
North 12°05'16" East, a distance of 1020.06 feet; thence
North 19°46'56" East, a distance of 664.11 feet; thence
North 10°21'43" East, a distance of 221.13 feet; thence
North 05°08'31" West, a distance of 228.25 feet; thence
North 15°14'38" West, a distance of 607.84 feet; thence

North 22°24'06" East, a distance of 568.17 feet to an iron pipe set, said pipe being a corner to Parcel "G" of the Plat of Division; thence departing the lands of said Parcel "T" and with the lands of said Parcel "G" the following four (4) courses and distances:

North 00°29'44" West, a distance of 290.34 feet; thence
North 06°53'35" West, a distance of 261.70 feet; thence
North 55°15'02" East, a distance of 486.80 feet; thence

North 01°42'33" West, a distance of 445.36 feet to an iron pipe set, said pipe being a corner to Parcel "E" of the Plat of Division; thence departing the lands of said Parcel "G" and with the lands of said Parcel "E" the following three (3) courses:

South 89°16'28" East, a distance of 980.05 feet; thence
South 77°59'25" East, a distance of 1633.25 feet; thence

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Parcel "H"
Lorton Correctional Complexes (LCC)
January 10, 2002

North 59°16'42" East, a distance of 1291.92 feet to a point in the centerline of Furnace Road ~ Virginia State Route #611 ~ 30' prescriptive right-of-way, thence departing centerline of said Furnace Road and continuing with the lands of said Parcel "E",

North 80°18'59" East, a distance of 1122.32 feet to the Point of Beginning

Containing 512.6690 ACRES of land, more or less.

DMD/em

EXHIBIT B – PARCEL 15

Please see the attached document.



GENERAL CIVIL
 TRANSPORTATION
 ENVIRONMENTAL
 GEOGRAPHIC SCIENCES

January 10, 2002

**METES AND BOUNDS DESCRIPTION OF
 PARCEL "G"
 LORTON CORRECTIONAL COMPLEXES (LCC)
 PLAT OF DIVISION
 BASED ON THE BOUNDARY SURVEY PREPARED BY
 GREENHORNE & O'MARA, INC.
 MOUNT VERNON DISTRICT
 FAIRFAX COUNTY, VIRGINIA**

Beginning at a point in the centerline of Ox Road ~ Virginia State Route #123 ~ 30' prescriptive right-of-way, said point being a corner to the lands of Fairfax County Water Authority and Parcel "G" of the Plat of Division; thence departing the centerline of said Ox Road and the lands of said Fairfax County Water Authority and with the lands of said Parcel "G" the following two (2) courses:

South 77°50'42" East, a distance of 33.77 feet; thence

South 64°43'24" East, a distance of 923.51 feet to an iron pipe set, said pipe being a corner to Parcel "H" of the Plat of Division; thence departing said Parcel "G" and with the lands of said Parcel "H" the following thirty five (35) courses and distances:

South 22°24'06" West, a distance of 568.17 feet; thence
 South 15°14'38" East, a distance of 607.84 feet; thence
 South 05°08'31" East, a distance of 228.25 feet; thence
 South 10°21'43" West, a distance of 221.13 feet; thence
 South 19°46'56" West, a distance of 664.11 feet; thence
 South 12°05'16" West, a distance of 1020.06 feet; thence
 South 03°49'08" West, a distance of 539.91 feet; thence
 South 14°48'40" East, a distance of 364.50 feet; thence
 South 43°07'53" East, a distance of 357.74 feet; thence
 North 85°11'41" East, a distance of 63.29 feet; thence
 South 54°36'03" East, a distance of 139.55 feet; thence
 North 62°32'56" East, a distance of 71.18 feet; thence
 North 19°26'56" East, a distance of 45.63 feet; thence
 North 67°24'52" East, a distance of 98.52 feet; thence
 North 76°40'38" East, a distance of 54.54 feet; thence
 North 80°24'03" East, a distance of 212.78 feet; thence
 South 08°45'40" West, a distance of 166.22 feet; thence

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South 79°31'19" East, a distance of 300.26 feet; thence
North 07°27'10" East, a distance of 256.37 feet; thence
North 84°42'12" East, a distance of 538.01 feet; thence
South 74°44'56" East, a distance of 545.00 feet; thence
South 50°35'38" East, a distance of 91.54 feet; thence
North 67°27'15" East, a distance of 533.64 feet; thence
North 20°08'55" East, a distance of 543.64 feet; thence
North 37°16'07" West, a distance of 28.10 feet; thence
South 37°51'08" West, a distance of 41.01 feet; thence
North 52°24'19" West, a distance of 57.08 feet; thence
North 37°20'28" East, a distance of 42.32 feet; thence
North 47°46'12" West, a distance of 480.18 feet; thence
North 24°59'42" East, a distance of 1418.18 feet; thence
North 88°23'40" East, a distance of 520.61 feet; thence
South 52°30'56" East, a distance of 229.91 feet; thence
North 37°54'47" East, a distance of 295.00 feet; thence

South 55°56'38" East, a distance of 271.77 feet to an iron pipe set in the line of the lands of Furnace Associates, Inc. ~ Deed Book 4777 at Page 164; thence departing said Parcel "HP" and with the lands of said Furnace Road Associates,

South 37°21'19" West, a distance of 35.13 feet to a set concrete monument; thence continuing with said lands of Furnace Associates, Inc. the following two (2) courses and distances:

South 41°58'22" East, a distance of 443.56 feet; thence

South 42°25'22" East, a distance of 673.99 feet (passing 1.27 feet right of a found concrete monument at 299.87 feet, and through a set concrete monument at 650.00 feet) to a point in the centerline of Furnace Road ~ Virginia State Route #611 ~ variable width and prescriptive right-of-way; thence with the centerline of said Furnace Road the following five (5) courses and distances:

South 01°18'52" East, a distance of 105.29 feet; thence
South 05°01'05" East, a distance of 95.61 feet; thence
South 07°31'01" East, a distance of 100.92 feet; thence
South 12°48'08" East, a distance of 98.08 feet; thence

South 22°37'27" East, a distance of 66.96 feet to a point; thence departing the centerline of said Furnace Road, and with the lands of W. & N. Company ~ Deed Book 6404 at Page 331, and then with another parcel of the lands of W. & N. Company ~ Deed Book 6404 at Page 331,

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Parcel "T"
Lorton Correctional Complexes (LCC)
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South 41°44'13" West, a distance of 950.11 feet (passing through a found iron pipe at 16.69 feet, and through a found concrete monument at 450.17 feet) to a point, said point being North 42°31'18" East, 0.26 feet from a found iron pipe; thence continuing with the lands of W. & N. Company, and then with another parcel of the lands of Furnace Associates, Inc. ~ Deed Book 5227 at Page 780,

South 82°20'26" East, a distance of 1123.85 feet (passing through a found concrete monument at 79.84 feet, through a found concrete monument at 500.01 feet, 0.22 feet left of a disturbed found concrete monument at 975.47 feet, and through a found concrete monument at 1100.46 feet) to a point in the centerline of the aforesaid Furnace Road; thence with the centerline of said Furnace Road the following eight (8) courses and distances:

South 27°39'53" East, a distance of 30.20 feet; thence
South 30°07'37" East, a distance of 329.82 feet; thence
South 31°46'16" East, a distance of 259.93 feet; thence
South 29°54'30" East, a distance of 83.90 feet; thence
South 23°59'33" East, a distance of 92.22 feet; thence
South 19°40'27" East, a distance of 91.41 feet; thence
South 16°27'08" East, a distance of 85.45 feet; thence

South 13°52'07" East, a distance of 37.20 feet to a point; thence departing the centerline of said Furnace Road, and with the lands of Colchester Land Company, L.L.C. ~ Deed Book 9445 at Page 109, the following twenty-one (21) courses and distances:

South 53°09'11" West, a distance of 3130.36 feet (passing through a found concrete monument at 21.29 feet, through a found concrete monument at 351.61 feet, through a found concrete monument at 745.88 feet, through a found concrete monument at 1107.55 feet, through a found concrete monument at 1515.88 feet, through a found concrete monument at 2000.95 feet, through a found concrete monument at 2516.05 feet, and through a found concrete monument at 3085.37 feet; thence

North 14°46'18" West, a distance of 183.98 feet; thence
North 27°03'12" West, a distance of 81.00 feet; thence
North 05°56'12" West, a distance of 82.17 feet; thence
North 61°47'22" West, a distance of 30.14 feet; thence
North 60°50'42" West, a distance of 192.62 feet; thence
North 76°29'42" West, a distance of 156.75 feet; thence
North 55°30'02" West, a distance of 84.25 feet; thence
North 65°47'22" West, a distance of 272.55 feet; thence
North 37°39'02" West, a distance of 203.48 feet; thence
North 81°58'02" West, a distance of 32.17 feet; thence
South 45°58'28" West, a distance of 91.19 feet; thence

Page 4
 Parcel "P"
 Lorton Correctional Complexes (LCC)
 January 10, 2002

South 18°27'48" West, a distance of 135.13 feet; thence
 South 67°16'38" West, a distance of 148.76 feet; thence
 South 30°44'52" East, a distance of 428.59 feet; thence
 South 65°03'12" East, a distance of 54.00 feet; thence
 South 31°54'32" East, a distance of 206.66 feet (passing through a found concrete monument at
 156.66 feet); thence
 South 82°54'18" West, a distance of 64.78 feet; thence
 South 29°00'18" West, a distance of 355.81 feet; thence
 South 13°20'38" West, a distance of 167.10 feet; thence

South 46°50'32" East, a distance of 182.95 feet to a point on the shore line of the Occoquan River;
 thence with the shore line of said Occoquan River the following thirty-four (34) courses and distances:

North 82°20'12" West, a distance of 230.20 feet; thence
 North 68°37'22" West, a distance of 257.19 feet; thence
 North 88°19'02" West, a distance of 187.17 feet; thence
 North 75°52'52" West, a distance of 227.31 feet; thence
 North 58°11'57" West, a distance of 276.78 feet; thence
 North 41°22'51" West, a distance of 105.87 feet; thence
 North 01°56'11" East, a distance of 211.90 feet; thence
 North 00°21'53" East, a distance of 89.79 feet; thence
 North 21°36'37" West, a distance of 306.42 feet; thence
 North 06°31'39" East, a distance of 106.97 feet; thence
 North 06°46'42" West, a distance of 194.29 feet; thence
 North 15°38'46" West, a distance of 94.85 feet; thence
 North 02°02'48" West, a distance of 214.07 feet; thence
 North 31°12'18" West, a distance of 240.82 feet; thence
 North 18°46'13" West, a distance of 92.58 feet; thence
 North 29°19'35" West, a distance of 132.29 feet; thence
 North 50°10'28" West, a distance of 124.39 feet; thence
 North 24°50'24" West, a distance of 129.16 feet; thence
 North 59°56'35" West, a distance of 86.38 feet; thence
 North 28°31'35" West, a distance of 99.93 feet; thence
 North 44°57'08" West, a distance of 114.06 feet; thence
 North 46°54'20" West, a distance of 122.60 feet; thence
 North 38°49'36" West, a distance of 460.53 feet; thence
 North 27°20'38" West, a distance of 70.45 feet; thence
 North 39°30'51" West, a distance of 132.59 feet; thence
 North 38°32'03" West, a distance of 334.42 feet; thence
 North 22°40'25" West, a distance of 166.84 feet; thence
 North 41°56'50" West, a distance of 87.14 feet; thence
 North 47°42'17" West, a distance of 58.00 feet; thence
 North 47°00'18" West, a distance of 78.64 feet; thence

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Page 5
Parcel "P"
Lorton Correctional Complexes
January 10, 2002

North 52°12'39" West, a distance of 61.84 feet; thence
North 44°09'33" West, a distance of 243.03 feet; thence
North 52°25'52" West, a distance of 169.70 feet; thence

North 60°04'15" West, a distance of 123.27 feet to a point on the eastern right-of-way line of Ox Road ~ Virginia State Route #123 ~ variable right-of-way and prescriptive right-of-way; thence departing shoreline of said Occoquan River, and with eastern right-of-way line of said Ox Road the following six (6) courses and distances:

North 05°55'12" East, a distance of 144.04 feet; thence
North 23°00'49" East, a distance of 142.57 feet; thence
North 04°24'36" West, a distance of 153.14 feet; thence
North 02°39'12" West, a distance of 284.03 feet; thence
North 05°33'04" East, a distance of 239.80 feet; thence

North 01°27'04" West, a distance of 45.60 feet to a found concrete monument, said monument being a corner of the lands of Newton Asphalt Company Incorporated of Virginia ~ Deed Book 5431 at Page 1105; thence departing eastern right-of-way line of said Ox Road, and with lands of said Newton Asphalt Company Incorporated of Virginia and then with the lands of Virginia Public Service Company ~ Deed Book C-11 at Page 279,

North 24°15'38" East, a distance of 1959.29 feet (passing through a set concrete monument at 458.62 feet, through a found concrete monument at 958.55 feet, and through a found concrete monument at 1458.51 feet) to a found concrete monument; thence continuing with the lands of said Virginia Public Service Company,

North 65°07'31" West, a distance of 553.88 feet to a point in the centerline of the aforesaid Ox Road, said point also being a corner of the lands of Fairfax County Water Authority ~ Deed Book 10373 at Page 1122; thence departing said Virginia Public Service Company and with the centerline of said Ox Road and the lands of said Fairfax County Water Authority the following ten (10) courses and distances:

North 17°25'01" East, a distance of 135.23 feet; thence
North 08°58'36" East, a distance of 140.49 feet; thence
North 01°57'18" West, a distance of 94.46 feet; thence
North 05°25'49" West, a distance of 237.79 feet; thence
North 08°37'53" West, a distance of 66.29 feet; thence
North 18°54'17" West, a distance of 107.03 feet; thence
North 25°41'36" West, a distance of 84.80 feet; thence
North 20°25'45" West, a distance of 61.62 feet; thence
North 07°47'07" West, a distance of 51.65 feet; thence
North 06°41'12" East, a distance of 48.34 feet to the Point of Beginning

Containing 417.5254 ACRES of land, more or less.

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EXHIBIT C – PROJECT AREA

The “Project Area” is the area within the yellow boundary on the attached document.

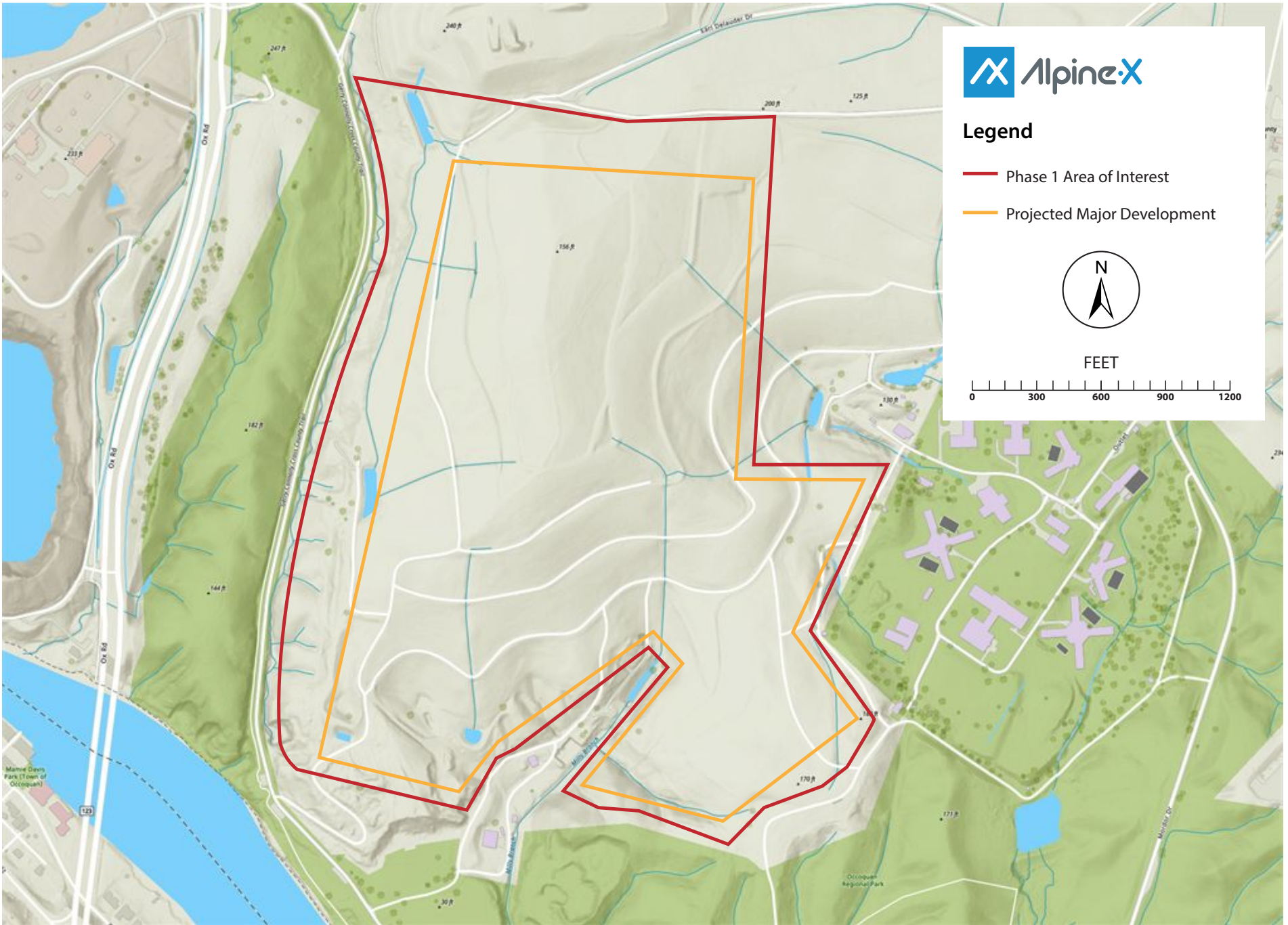


EXHIBIT D – RIGHT OF ENTRY AGREEMENT

Please see the attached document.

EFFECTIVE DATE: May 11, 2020

**FAIRFAX COUNTY
RIGHT OF ENTRY AGREEMENT**

RE: I-95 Landfill Complex, Lorton

THIS RIGHT OF ENTRY AGREEMENT (“Agreement”) by and between **THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA** (the “County”) and **ALPINE-X LLC** (the “Developer”).

RECITALS

WHEREAS, the County owns that certain parcel of real property having Fairfax County Tax Map Parcel Number 113-1 ((1)), Parcel 14 (“Parcel 14”); and

WHEREAS, Developer desires to enter that portion of Parcel 14 contained within the golden boundary line on graphic on the attached Exhibit A (such portion, the “Property”) for the purpose of performing certain Feasibility Studies (as defined below) in anticipation of negotiating an agreement with the County for the development of the Property pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002, Chapter 22.1 of Title 56 of the Virginia Code (“PPEA”).

NOW, THEREFORE, in consideration of the Recitals, which are incorporated into this Agreement by reference, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Right of Entry. Subject to the terms and conditions of this Agreement, starting on the Effective Date and continuing until the Expiration Date, the County grants the Developer and its employees, agents, contractors, and invitees (collectively, “Agents”) the right to enter the Property at any time during daylight hours Monday through Saturday for performing the tasks described on Exhibit B to this Agreement (the “Feasibility Studies”). For clarity, the Property includes only those portions of Parcel 14 within the golden boundary line on the graphic on Exhibit A; it does not include other areas within Parcel 14 that are outside the golden line on Exhibit A. Other than the Feasibility Studies, Developer shall make no other use of the Property and shall perform no other activities on the Property without the County’s prior written approval.

2. Expiration; Termination. This Agreement will automatically expire (without further action by the County) at 11:59 p.m. on December 31, 2020 (the “Expiration Date”). The County and the Developer may mutually agree in writing to extend the Expiration Date, but neither party is under any obligation to do so. Notwithstanding the foregoing, the County may revoke this Agreement

at any time by notice delivered to Developer at the address set forth in Section 11 of this Agreement.

3. Prerequisites to Entry. Before entering the Property for each component of the Feasibility Studies (whether conducted individually or collectively), Developer must:

a. Provide proof of insurance as required in Section 10 of this Agreement; and

b. Provide advance notice (via email to each of John Kellas (john.kellas@fairfaxcounty.gov), Eric Forbes (eric.forbes@fairfaxcounty.gov), and Robert Glenn (robert.glenn@fairfaxcounty.gov)) and receive the County's approval (by email from one of the three named recipients) to proceed, such approval not to be unreasonably withheld or delayed.

4. Performance of Feasibility Studies.

a. During initial clearing and grubbing, Developer and its Agents will identify all County monitoring wells, whether active or abandoned, that are located within the areas of actual work or investigation pursuant to the Feasibility Studies and surround them with orange construction fencing to prevent disturbance.

b. If, as a result of Developer's Feasibility Studies, subsurface trash or waste is disturbed or exposed, Developer will document, photograph, and locate via GPS each area of exposed trash, including the depth discovered and the surface area of the waste. The Developer will remove at its cost any such exposed or disturbed trash to an active portion of the landfill, if any, the adjacent resource recovery facility, or to another facility appropriate to receive the material(s). Developer and its Agents will use its best efforts to cap areas of exposed waste by the end of each working day with clay or synthetic material to seal the waste areas. The cap will comply with the Property's closure plan and applicable permits. When daily cap repair is not practically achievable, the Developer will provide a temporary cover of either 6" of dirt, a tarp or other approved material to minimize infiltration and prevent surface litter, provided that such temporary measure is replaced with a permanent cap within three (3) days. No stock piling of waste is authorized. Developer and its Agents must notify the County at the close of business of each working day of the discovery of any subsurface waste or trash disturbed or exposed by Developer or its Agents.

c. The Developer and its Agents will coordinate with the County to allow the County to arrange for site inspection during all work associated with the Feasibility Studies. The Developer and its Agents will, upon request, (i) allow the County and its designated consultant(s) (as identified by the County to the Developer) such access to the Feasibility Study work areas as the County or its consultant may deem necessary from time to time to monitor the work of the Feasibility Studies and (ii) provide the County's consultant with such information regarding the work of the Feasibility Studies as the consultant may reasonably require.

d. Developer and its Agents will coordinate with the County for any temporary modifications to the existing drainage systems if impacted by the Feasibility Studies. Developer

and/or its Agents will modify and connect any underground pipes that become exposed to daylight by new slopes to new project drainage features that meet County and DEQ requirements.

e. Encountering methane should be expected. When conducting the Feasibility Studies, Developer and its Agents will employ appropriate methane detection and mitigation measures at all times in accordance with industry standards for comparable studies or investigative work.

f. The County will provide Developer with a copy of the I-95 safety plan. Developer and its Agents must immediately stop work upon notification from County staff that work is being conducted in an unsafe manner and, in the view of the County, poses a risk to the Property and/or the surrounding area. In such event, Developer and its Agents may not resume work until County staff and the Developer agree upon modifications or measures intended to address the alleged deficiencies.

g. Developer and its Agents will comply with all applicable laws, ordinances and OSHA safety protocols related to construction-related activities while conducting the Feasibility Studies on the Property. Developer and its Agents will provide and adequately maintain any barricades, fences, signs, lanterns and other suitable devices as deemed necessary by OSHA guidelines for employee and public safety with respect to the Feasibility Studies performed under this Agreement.

h. During periods of actual work related to the Feasibility Studies, Developer and its Agents will maintain the security of each of its work sites on the Property to the reasonable satisfaction of the County for the purpose of limiting access to the Feasibility Study work areas to only Developer and its Agents. Developer and its Agents will each maintain all its work areas on the Property in a clean and presentable manner.

i. The County and the Developer may add to the scope of the Feasibility Studies by amending this Agreement (including Exhibits A and B) in writing, neither party being under any obligation to do so.

j. Notwithstanding anything in this Agreement to the contrary, Developer and its Agents will not dig or drill to, or otherwise disturb, existing subgrade or landfill base. If the depth of the subgrade and/or landfill base cannot be determined at given location, Developer and its Agents will not dig or drill in or otherwise disturb such location without the County's prior written approval.

5. Restoration. Except as provided in Section 4 above regarding the potential installation of new caps, Developer, at its own expense, will promptly restore, as near as reasonably possible, those portions of the Property disturbed by Developer and/or its Agents to their original condition(s) in accordance with the Property's closure plan and applicable permits. Developer and its Agents will coordinate with the County before commencing any such restoration work.

6. Hazardous Materials.

a. Developer acknowledges that the Property is the site of a closed landfill and may contain Hazardous Materials (as defined below). If Developer or its Agents discovers any Hazardous Materials on the Property that would not otherwise reasonably be expected to be discovered when conducting the Feasibility Studies on a closed landfill, such as evidence of potential chemical contamination or leak, it or they will immediately notify the County.

b. "Hazardous Materials" means (a) asbestos and any asbestos containing material and any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Law (as defined below) or any other applicable law as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity or Toxicity Characteristic Leaching Procedure (TCLP) toxicity; (b) any petroleum and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; and (c) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear or by-product material), medical waste, chlorofluorocarbon, lead or lead-based product and any other substance the presence of which could be detrimental to the Property or hazardous to health or the environment.

i. "Environmental Law" means any present and future law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of governmental authorities applicable to the Property and relating to the environment and environmental conditions or to any Hazardous Material (including, without limitation, CERCLA, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 1101 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; and any so-called "Super Fund" or "Super Lien" law, any law requiring the filing of reports and notices relating to hazardous substances, environmental laws administered by the Environmental Protection Agency and any similar state and local Laws, all amendments thereto and all regulations, orders, decisions and decrees now or hereafter promulgated thereunder concerning the environment, industrial hygiene or public health or safety

7. Election Not to Proceed; Reports. In the event either the County or the Developer notifies the other of its intent not to proceed with execution of a Interim Agreement pursuant to the PPEA process, Developer must, promptly following such notice, deliver to the County or destroy all materials or reports in Developer's possession prepared or obtained through the Feasibility Studies and must deliver to the County a certified statement that all work that could give rise to a lien against the Property has been paid in full. Before any such notice, the County may request information and/or reports prepared or obtained through the Feasibility Studies as part of PPEA negotiations.

8. Equipment.

a. Developer and its Agents may store equipment on the Property during the term of this Agreement; provided, however, that Developer and its Agents shall be solely responsible for securing such equipment on the Property, and the County will not be liable for any theft or damage to any equipment stored by Developer on the Property.

b. At the expiration or termination of this Agreement, the Developer will remove all tools, equipment, and other personal property from the Property at its sole cost. This provision survives the expiration or earlier termination of this Agreement.

9. Indemnification. Developer will indemnify and hold harmless the County and its officials, officers, employees, and agents:

a. From and against any and all claims, demands, damages, suits, actions, proceedings, judgments, decrees, orders, fines, costs, and expenses (including reasonable attorney's fees) due to any damage to property, injury or death of any person, or otherwise as a result of the entry upon or activities within the Property by the Developer, its employees, Agents, or independent contractors occurring in connection with, or arising out of the performance of the work permitted by this Agreement; provided, however, the foregoing indemnity shall exclude any claims or liabilities caused by the gross negligence or willful misconduct of the County;

b. From all liabilities, remedial costs, environmental claims, fees, or other expenses directly related to, arising from, or attributable to (i) any Hazardous Materials introduced by the Developer on the Property or (ii) Developer's activities involving Hazardous Materials on the Property, to the extent that Developer is either negligent in such activities or in breach of the terms of this Agreement (e.g., failure to appropriately install a cap). The foregoing indemnity excludes any claims or liabilities caused by the gross negligence or willful misconduct of the County; and

c. From any claims by contractors or subcontractors who perform any activity on the Property; provided, however, the foregoing indemnity shall exclude any claims or liabilities caused by the gross negligence or willful misconduct of the County. This Agreement must not be construed as granting the Developer or any contractor of the Developer the right to place any lien, mechanic's lien, or any charge on the Property.

10. Insurance.

a. Developer and/or its Agents will obtain and maintain throughout the term of this Agreement the following types of insurance:

i. Statutory Workers' Compensation and Employer's Liability insurance in limits of not less than \$1,000,000 to protect from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.

ii. Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/aggregate, to protect the Developer, its Agents, and the interest of the County, its officers and employees against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work.

iii. Owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Developer or its Agents. In addition, all mobile equipment used by the Developer or its Agents in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy.

b. The County and its officials, officers, employees, and agents will be named as “additional insured” on the General Liability and automobile policies.

c. Each of the insurance policies required by this Section 10 must be issued by companies licensed and authorized to do business in the Commonwealth of Virginia and having a Best’s Key Rating of at least A:VII.

d. For so long as this Agreement remains effective, Developer may not cancel, terminate or modify (except to increase the amount of coverage) the required insurance policies without providing thirty (30) days’ prior written notice from Developer to the County. If the required insurance policies should be canceled, terminated, or modified, so that the insurance is not in full force and effect, then the County may terminate this Agreement immediately, without prior notice or right to cure by the Developer

e. Evidence of the requisite insurance policies in the form of certificates of insurance must be submitted to the County before entry by Developer or its Agents onto the Property and from time to time at the County’s request. The insurance certificates must state that the coverage “is primary to all other coverage the County may possess.”

11. Notice.

a. Except as set forth in Paragraph 3 above, all notices, demands or other communications sent under this Agreement (“Notice”) must be in writing. Notices must be given by (i) personal delivery or (ii) a nationally recognized, next-day courier service, addressed as follows:

If to the County:

Fairfax County Department of Public Works & Environmental Services
12000 Government Center Parkway, Suite 548
Fairfax, VA 22035
Attention: John Kellas, Director of Solid Waste & Recycling
john.kellas@fairfaxcounty.gov

With a copy to:

Fairfax County Facilities Management Department
12000 Government Center Parkway, Suite 424
Fairfax, VA 22035
Attention: Michael Lambert, Assistant Director
michael.lambert@fairfaxcounty.gov

and

Office of the County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035
Attention: County Attorney
ryan.wolf@fairfaxcounty.gov

If to the Developer:

Niels ten Berge
1308 Vincent Place
McLean, VA22101
Niels@alpine-X.com

and:

Brad Ryan
1308 Vincent Place
McLean, VA22101
Brad@alpine-X.com

With a copy to:

Cooley LLP
11951 Freedom Drive, Suite 1400
Reston, VA 20190
Attention: Mark C. Looney
mlooney@cooley.com

b. A Notice given in accordance with this Agreement will be effective upon receipt or refusal by the party to which it is given.

c. For convenience, Notices may be sent via email; however, such email Notice will not be considered effective until the original Notice is received by the party to which it is given pursuant to one of the delivery methods described in Section 11(a) above.

d. Either party may change its Notice address from time to time by informing the other party in writing of such new address.

12. Miscellaneous.

a. Governing Law. This Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia without regard to its conflict of laws statutes.

b. Survival. The obligations of Sections 4(b), 5, 8(b), and 9 will survive the expiration or other termination of this Agreement.

c. Waiver, Modification. Failure by either party to insist upon or enforce any of its rights hereto shall not constitute a waiver thereof, except where non-action is expressly described herein as such a waiver. This Agreement shall not be modified, amended, or altered except by a written agreement signed by the County and the Developer.

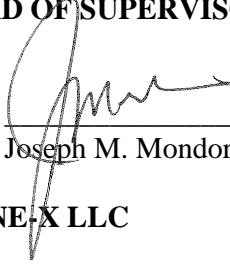
d. No Right, Title, or Interest. Nothing contained in this Agreement and no action or inaction by the County shall be deemed or construed to mean that the County has granted the Developer any right, power, or permission to do any act or make any agreement that may create, give rise to, or be the foundation for any right, title, interest, lien, or charge to the Property, including, but not limited to, the grant of an easement in the Property.

e. Time. With respect to all time periods contained in this Agreement, it is expressly understood that time is of the essence.

f. Appropriations. To the extent this Agreement is construed to impose any financial obligations upon the County, any such financial obligations shall be binding to the extent of appropriations by the Fairfax County Board of Supervisors.

g. Counterparts; Electronic Signature. This Agreement may be executed and delivered in any number of counterparts, in the original or by electronic transmission, each of which so executed and delivered will be deemed to be an original and all of which will constitute one and the same instrument.

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA

By: 

Joseph M. Mondoro, Chief Financial Officer

ALPINE X LLC

By: _____
Niels ten Berge, Chief Executive Officer

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BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA

By: _____
Joseph M. Mondoro, Chief Financial Officer

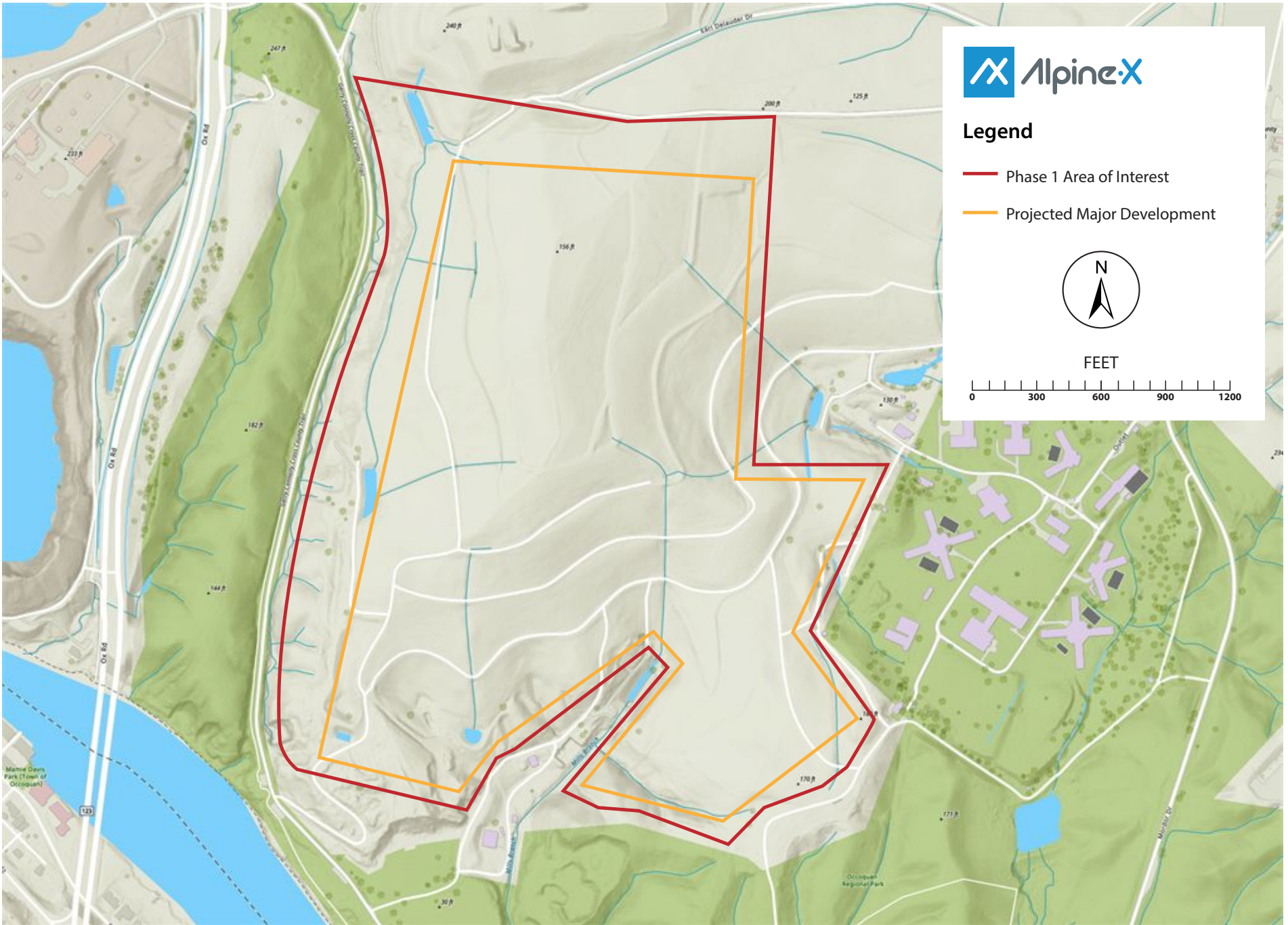
ALPINE-X LLC

By:  _____
Niels ten Berge, Chief Executive Officer

EXHIBIT A

DESCRIPTION OF PROPERTY

Please see attached graphic.



Legend

- Phase 1 Area of Interest
- Projected Major Development



FEET

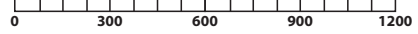


EXHIBIT B

SCOPE OF WORK

Please see attached document.



The current scope of the project is marked with the burgundy red line. The yellow area will be used for further exploration of the feasibility of building large construction on the landfill.

Expected Feasibility Surveys:

- ALTA (American Land Title Association) Survey
- UAV (unmanned aerial vehicle) topographical survey
- Ground Penetrating Radar (GPR) and Electrical Resistivity Testing
- Cone penetrometer test (CPT)
- Standard Penetration Testing
- Test pits (not expected)
- Geotechnical sampling of waste properties
- In-situ Permeability Testing and Evaluation (Pumping Tests)
- Soil/Groundwater/Surface Water/Leachate Sampling and Analysis
- Confirm access to utilities (grey water, water, heat, sewer, etc.)
- Groundwater and Seepage Analysis and Design
- Lateral Earth Pressure Estimates (Field Load Tests)
- Settlement Analyses and Monitoring
- Hydrologic Investigation and Analyses
- Erosion Inspections
- Hydraulic Analyses of Pipes, Channels, Ditches, etc.
- Phase 1 ESA (Environmental Site Assessments)



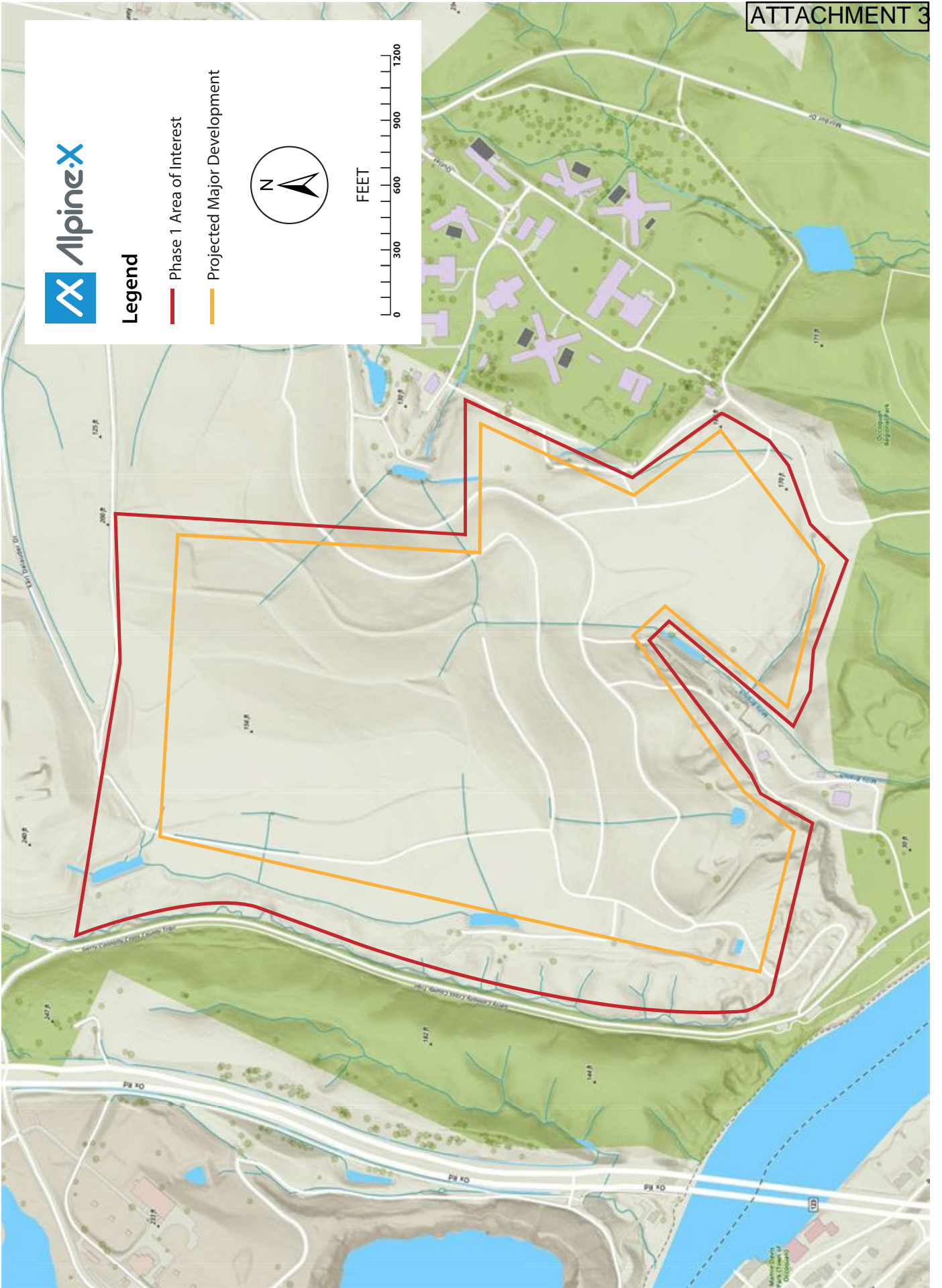
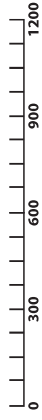
Legend

— Phase 1 Area of Interest

— Projected Major Development



FEET



Board Agenda Item
November 17, 2020

ACTION - 6

Designation of the Little River Glen and Autumn Willow Senior Housing Sites as Revitalization Areas (Braddock and Springfield Districts)

ISSUE:

The Board is requested to designate the Little River Glen and Autumn Willow Senior Housing Properties as Revitalization Areas pursuant to Virginia Code § 36-55-30:2.

RECOMMENDATION:

The County Executive recommends that the Board designate the Little River Glen and Autumn Willow Senior Housing Sites as Revitalization Areas, for the purpose of facilitating Low Income Housing Tax Credits (LIHTC).

TIMING:

Immediate. Board revitalization area designation is requested for the development partners to meet the March 2021, deadline for submitting Low Income Housing Tax Credits applications to Virginia Housing (VH), formerly known as the Virginia Housing Development Authority.

BACKGROUND:

The Little River Glen Senior Housing Campus: The Little River Glen (LRG) campus, identified by Tax Map 58-4 ((1)) 41A, 47A1 and 47A2 in the Braddock District, was approved by the Board of Supervisors in 1998 pursuant to SEA 87-A-017 and concurrent PCA 87-A-011, PCA 89-A-001, and RZ 96-B-021 as a four-phase development. Phases I, II, and III, known respectively as Little River Glen (120 units), Braddock Glen (60 beds of assisted living) and Olley Glen (90 units) have been developed. Staff of the Department of Housing and Community Development (HCD) has initiated the design phase for Phase IV, known as LRG IV (Tax Map: 58-4 ((1)) 0047A2), to create 60 additional independent affordable senior housing units within two two-story buildings to be developed by the Fairfax County Redevelopment and Housing Authority (FCRHA). LRG IV will include an active recreation area, additional parking spaces, and covered walkways connecting the two buildings. In addition, HCD has initiated the physical needs assessment phase to define the scope of work for the renovation of the existing 120 units at the original Little River Glen (Tax Map:58-4 ((1)) 0041A).

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Autumn Willow Property: The Autumn Willow property is located at the intersection of Stringfellow Road and Autumn Willow Drive, in the Springfield District. The property is 10.6 acres identified by Tax Map No. 055-3 ((1)) Parcel 26B. On November 6, 2019, the Board authorized the transfer of the Autumn Willow property to the FCRHA to develop senior affordable housing.

In August 2020, The Michaels Development Company I, LP (Michaels) was selected through the PPEA process to construct 150 affordable senior housing units in one building with surface parking. On July 30, 2020, Michaels and the FCRHA entered into an Interim Agreement to commence certain design and zoning related work and other due diligence on the Autumn Willow property in order to meet the requirements established by VH for 9% low-income housing tax credits.

Affordability Restrictions:

The units in the proposed developments will be affordable to seniors with income between 30-60% Area Median Income as published by the U.S. Department of Housing and Urban Development.

Revitalization Area Designation and Tax Credit Application:

Applying for Low Income Housing Tax Credits, which is a critical source of project funding, is a highly competitive process, with points awarded by VH to projects that meet specific criteria. A project is eligible for 15 additional points if the site is designated as a Revitalization Area as described in the Virginia Code § 36-55.30:2 (Revitalization Statute). If the LRG and Autumn Willow Senior Housing properties are each designated by the Board as “Revitalization Areas”, the designation will be used solely for the purpose of receiving additional points for the nine percent tax credit applications. The designation will in no manner affect any areas in Fairfax County that have, or in the future may be, determined by the Board to be Revitalization Areas or Revitalization Districts pursuant to Board actions on the County Comprehensive Plan that are separate and distinct from those set forth in the VH Revitalization Statute.

Staff has determined that the Little River Glen campus and Autumn Willow Senior Housing properties meet the above-referenced code definition because (i) the development of the areas will benefit Fairfax County, but these areas lack the housing needed to induce, among other things, the commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings, to locate or remain in these areas, and (ii) private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in

Board Agenda Item
November 17, 2020

such areas and will induce other persons and families to live within these areas and thereby create a desirable economic mix of residents in such areas.

For each application to receive the 15 points, a County Board resolution is needed to designate the development sites as Revitalization Areas pursuant to the Revitalization Statute criteria (Attachment 1).

ENCLOSED DOCUMENTS:

- Attachment 1 – Virginia Housing Revitalization Statute Criteria
- Attachment 2 – Resolution - Little River Glen Senior Housing Property
- Attachment 3 – Resolution - Autumn Willow Senior Housing Property
- Attachment 4 – Location Map - Little River Glen Senior Housing Property
- Attachment 5 – Location Map - Autumn Willow Senior Housing Property

STAFF:

Tisha M. Deeghan, Deputy County Executive
Thomas Fleetwood, Director, Department of Housing and Community Development (HCD)
Teresa G. Lepe, Deputy Director, Real Estate, Finance and Development, HCD
Ahmed Rayyan, Division Director, Design, Development and Construction, HCD
Mohamed Ghiwane, Project Manager, Design, Development and Construction, HCD

ASSIGNED COUNSEL:

Cynthia A. Bailey, Deputy County Attorney
Alan M. Weiss, Assistant County Attorney



Revitalization Area

General Instructions

Revitalization areas are defined in Virginia Code §36-55.30:2.A.

Designation

To qualify for revitalization area points, select one of the following (and provide adequate documentation):

1. The development is located in a Qualified Census Tract, as defined by HUD.
2. The development is located in a census tract wherein 70% or more of the families have incomes which are ≤ 80% statewide median income. **NOTE:** these census tracts are included in the definition of targeted area for single-family lending purpose, but do not include ACEDS.
3. The development is located in an already established redevelopment area, conservation area or rehabilitation district created by a city or county, pursuant to §36-1 et seq. Documentation must show area boundaries and support that the development lies within those boundaries.
4. The development is located in a Housing Rehabilitation Zone established through an ordinance created by a city, county or town pursuant to §36-55.64. Documentation must include a copy of the ordinance with support that the development lies within the Rehabilitation Zone.
5. The development is located in a defined revitalization area. Documentation must include a resolution from the locality supporting the development's location within the revitalization area. See language below.

*The above-referenced development is located in a Revitalization Area in the Town/City/County of _____, Virginia. The revitalization area is (i) **either** (1) blighted, deteriorated, deteriorating or, if not rehabilitated, likely to deteriorate by reason that the buildings, improvements or other facilities in such area are subject to one or more of the following conditions- dilapidation, obsolescence, overcrowding, inadequate ventilation, light or sanitation, excessive land coverage, deleterious land use, or faulty or otherwise inadequate design, quality or condition, **or** (2) the industrial, commercial or other economic development of such area will benefit the city or county but such area lacks the housing needed to induce manufacturing, industrial, commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings to locate or remain in such area; **and** (ii) private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in such area and will induce other persons and families to live within such area and thereby create a desirable economic mix of residents in such area.*

Delete the language that does not apply, (i)(1) or (i)(2) above.

RESOLUTION OF BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA
DESIGNATING THE LITTLE RIVER GLEN SENIOR HOUSING PROPERTY
REVITALIZATION AREA PURSUANT TO VIRGINIA CODE § 36-55.30:2

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held **electronically (due to the State of Emergency caused by the COVID-19 pandemic)**, ~~in the Board Auditorium of the Government Center in Fairfax, Virginia, on Tuesday, November 17, 2020,~~ at which quorum was present and voting, the following was adopted:

WHEREAS, pursuant to the provisions of the Public-Private Education Facilities and Infrastructure Act of 2002, as amended, the Department of Housing and Community Development has proposed that the Fairfax County Redevelopment and Housing Authority construct 60 affordable senior housing units and renovate the existing 120 affordable senior housing units (the “Development”) on a site in the Braddock District as described on Attachment 4 (the “Development Site”).

WHEREAS, the Department of Housing and Community Development’s financing plan for the Development includes, among other things, an application to Virginia Housing for competitive nine percent tax credits pertaining to a portion of the proposed Development.

WHEREAS, the Virginia Housing tax credit evaluation process provides that 15 additional points may be awarded to projects that meet the definition of a revitalization area pursuant to Virginia Code § 36-55-30:2 (“Revitalization Area”) and have been so designated by resolution of the governing body in which the Revitalization Area is located.

WHEREAS, the definition of a Revitalization Area used in Virginia Code § 36-55-30:2 is separate and distinct from terms “Revitalization Area” and “Revitalization District” as used in the various comprehensive plans for Fairfax County, Virginia. Any designation of the Development Site as a Revitalization Area does not in any manner affect any areas of the County that have been, or in the future may be, determined by the Board to be Revitalization Areas or Revitalization Districts.

WHEREAS, the Development Site meets the standards for a Revitalization Area as described in Virginia Code § 36-55-30:2, namely that (i) the development of the Development Site will benefit Fairfax County, but that such area lacks the housing needed to induce, among other things, the commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings, to locate or remain in such area, and (ii) private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in such area and will induce other persons and families to live within such area and thereby create a desirable economic mix of residents in such area.

NOW, THEREFORE, THE BOARD HEREBY DETERMINES as follows:

The above-referenced proposed Development is located in an area that is hereby designated a Revitalization Area in Fairfax County, Virginia in accordance with Virginia Code § 36-55-30:2. The Board has determined that (i) the commercial or other economic development of the Revitalization Area will benefit Fairfax County, but that this area lacks the housing needed to induce, among other things, the commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings, to locate or remain in this area, and (ii) private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in this area and will induce other persons and families to live within this area and thereby create a desirable economic mix of residents in such area.

ADOPTED this day 17th day of November 2020.

A Copy – Teste:

Jill G. Cooper
Clerk for the Board of Supervisors

RESOLUTION OF BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA
DESIGNATING THE AUTUMN WILLOW SENIOR HOUSING PROPERTY
REVITALIZATION AREA PURSUANT TO VIRGINIA CODE § 36-55.30:2

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, **held electronically (due to the State of Emergency caused by the COVID-19 pandemic)**, ~~in the Board Auditorium of the Government Center in Fairfax, Virginia,~~ on Tuesday, November 17, 2020, at which quorum was present and voting, the following was adopted:

WHEREAS, pursuant to the provisions of the Public-Private Education Facilities and Infrastructure Act of 2002, as amended, the Michaels Development Company I, LP (the “Developer”) has proposed to approximately 150 affordable senior housing units (the “Development”) on a site in the Springfield District as described on Attachment 5 (the “Development Site”).

WHEREAS, the Developer’s financing plan for the Development includes, among other things, an application to Virginia Housing for competitive nine percent tax credits pertaining to a portion of the proposed Development.

WHEREAS, the Virginia Housing tax credit evaluation process provides that 15 additional points may be awarded to projects that meet the definition of a revitalization area pursuant to Virginia Code § 36-55-30:2 (“Revitalization Area”) and have been so designated by resolution of the governing body in which the Revitalization Area is located.

WHEREAS, the definition of a Revitalization Area used in Virginia Code § 36-55-30:2 is separate and distinct from terms “Revitalization Area” and “Revitalization District” as used in the various comprehensive plans for Fairfax County, Virginia. Any designation of the Development Site as a Revitalization Area does not in any manner affect any areas of the County that have been, or in the future may be, determined by the Board to be Revitalization Areas or Revitalization Districts.

WHEREAS, the Development Site meets the standards for a Revitalization Area as described in Virginia Code § 36-55-30:2, namely that (i) the development of the Development Site will benefit Fairfax County, but that such area lacks the housing needed to induce, among other things, the commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings, to locate or remain in such area, and (ii) private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in such area and will induce other persons and families to live within such area and thereby create a desirable economic mix of residents in such area.

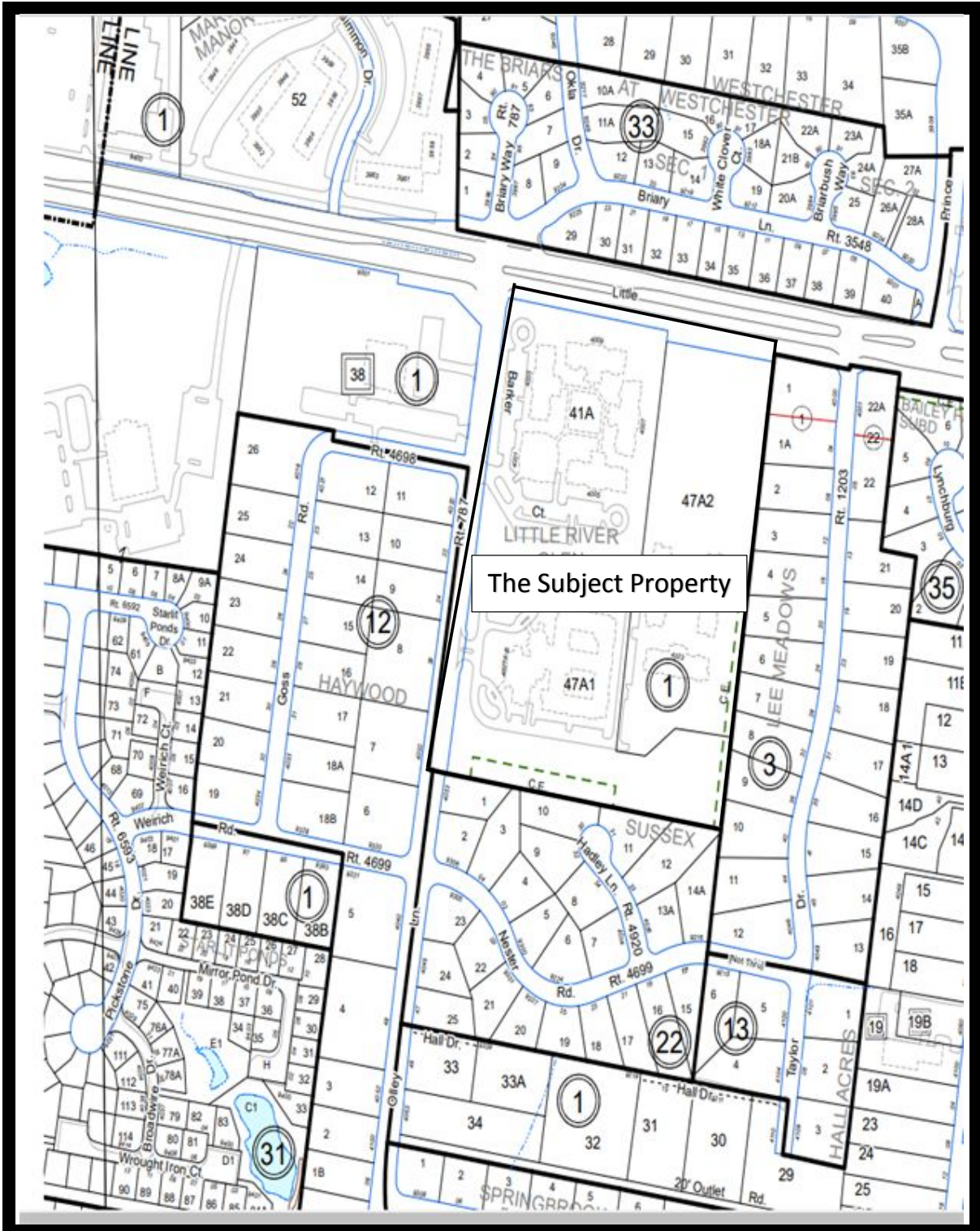
NOW, THEREFORE, THE BOARD HEREBY DETERMINES as follows:

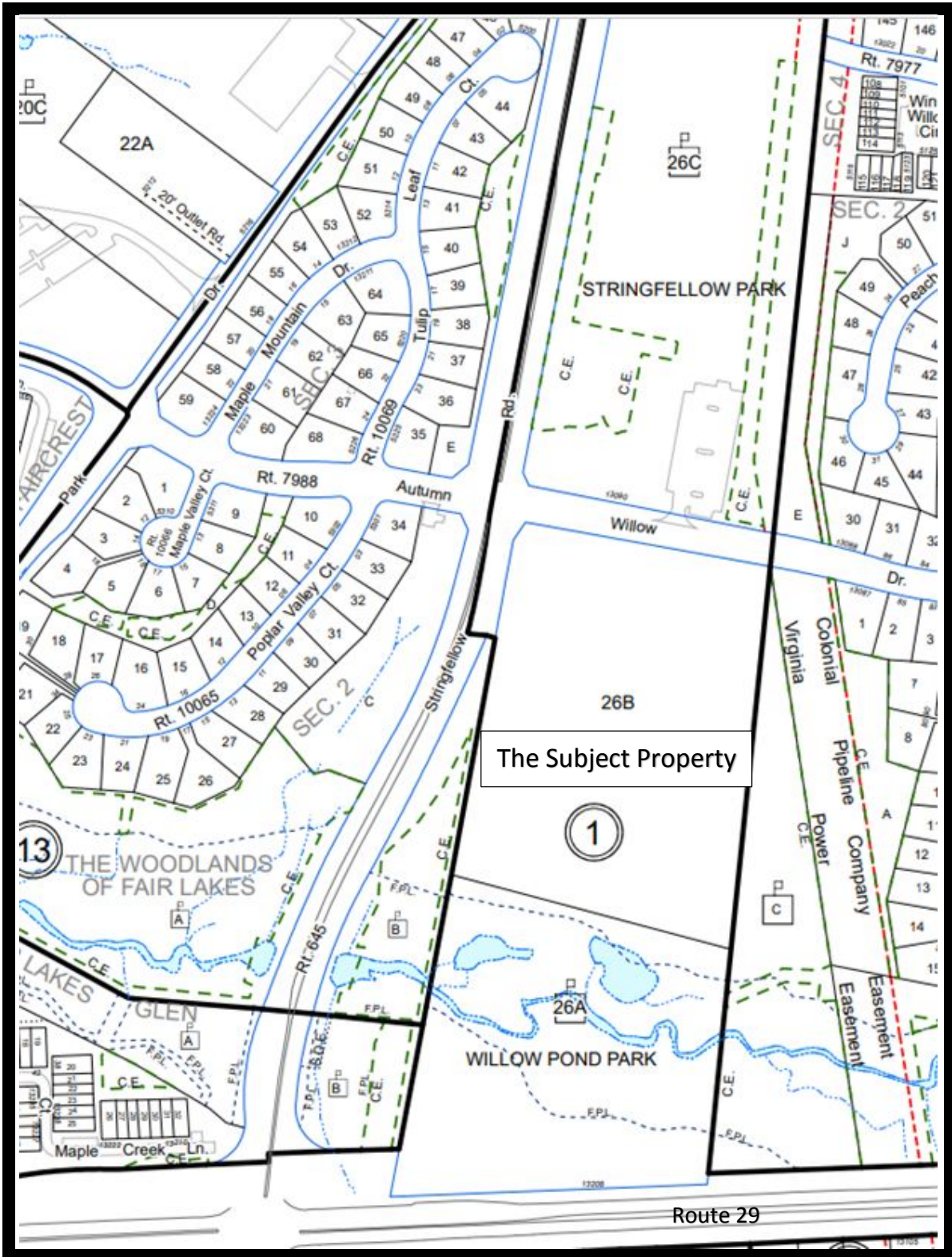
The above-referenced proposed Development is located in an area that is hereby designated a Revitalization Area in Fairfax County, Virginia in accordance with Virginia Code § 36-55-30:2. The Board has determined that (i) the commercial or other economic development of the Revitalization Area will benefit Fairfax County, but that this area lacks the housing needed to induce, among other things, the commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings, to locate or remain in this area, and (ii) private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in this area and will induce other persons and families to live within this area and thereby create a desirable economic mix of residents in such area.

ADOPTED this day 17th day of November 2020.

A Copy – Teste:

Jill G. Cooper
Clerk for the Board of Supervisors





Board Agenda Item
November 17, 2020

3:00 p.m.

Public Hearing to Receive Comment from Citizens on the Proposed Legislative Program to be Presented to the 2021 Virginia General Assembly

ENCLOSED DOCUMENTS:

Attachment I – The Draft Fairfax County Legislative Program for the 2021 Virginia General Assembly can be found online at:

<https://www.fairfaxcounty.gov/legislation/sites/legislation/files/assets/documents/pdf/2021/draft-2021-ga-legislative-program.pdf>.

Attachment II – The Draft Human Services Issue Paper can be found online at:

<https://www.fairfaxcounty.gov/legislation/sites/legislation/files/assets/documents/pdf/2021/master-draft-2021-human-services-issue-paper.pdf>.

STAFF:

Bryan J. Hill, County Executive
Claudia Arko, Legislative Director

Board Agenda Item
November 17, 2020

3:00 p.m.

Public Hearing to Consider Adoption of an Uncodified Ordinance to Provide a Method to Assure Continuity in Fairfax County Government During the COVID-19 Emergency, as Authorized by Virginia Code § 15.2-1413, by Approving Temporary County-Operated Hypothermia Prevention Shelters and Authorizing a Streamlined Process for Approving Temporary Use Modifications in Response to the Emergency, and to Repeal the Emergency Uncodified Ordinance on the Same Subject, Which Was Adopted on October 6, 2020, and Is Hereby Replaced by This Ordinance

ISSUE:

Virginia Code § 15.2-1413 authorizes the County to adopt ordinances that “provide a method to assure continuity in its government” in the event of a disaster. The COVID-19 emergency is a type of disaster contemplated by this statute, and this ordinance approves temporary County-operated hypothermia prevention shelters and authorizes a streamlined process for approving temporary use modifications in response to the emergency. This ordinance also repeals the emergency uncodified ordinance on the same subject, which was adopted on October 6, 2020, and is hereby replaced by this ordinance.

RECOMMENDATION:

The County Executive and County Attorney recommend that the Board adopt the ordinance provided as Attachment 1.

TIMING:

Board action is requested on November 17, 2020, to assure the County’s continued ability to establish and maintain hypothermia prevention shelters, before the emergency ordinance on the same subject expires, and to assure the Zoning Administrator’s ability to allow a temporary modifications to activities, uses, and structures where they are needed to comply with state or other governmental COVID-related guidelines and requirements.

BACKGROUND:

At a meeting on October 6, 2020, the Board of Supervisors adopted an emergency ordinance to establish methods to assure continuity in Fairfax County government by approving temporary County-operated hypothermia prevention shelters and authorizing a streamlined process for approving temporary use modifications in response to the

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emergency. An emergency ordinance cannot be enforced for more than 60 days unless it is readopted in conformity with the usual provisions of law. The ordinance currently before the Board would repeal and replace the emergency ordinance.

As this Board is aware, on March 12, the Governor declared a State of Emergency due to COVID-19, and on March 30, he ordered all individuals in Virginia to remain at their place of residence until June 10. He also extended prior orders limiting gatherings to no more than ten people and closing certain businesses until that same date. The Governor later extended the State of Emergency indefinitely.

On May 8, 2020, the Governor issued Executive Order 61, introducing Phase One in the state's strategy to ease some of the temporary restrictions instituted in Second Amended Executive Order 53 and Executive Order 55 (orders referred to collectively as Phase Zero). On May 12, 2020, the Governor issued Executive Order 62 extending Phase Zero for Northern Virginia through May 28, 2020. That order was amended on May 14, 2020, to extend Phase Zero for certain other jurisdictions.

The Governor allowed Amended Executive Order 62 to expire, moving Northern Virginia into Phase One on May 28, 2020. In Executive Order 65, issued on June 2, the Governor ordered that most of the Commonwealth, but not including Northern Virginia, would move into Phase Two on June 5. On June 9, 2020, the Governor amended Executive Order 65 to order Northern Virginia's entry into Phase Two on June 12.

In Executive Order 67, issued on June 30, the Governor ordered the Commonwealth's entry into Phase Three. While Phase Three further relaxed restrictions on activities, they are not completely lifted. In addition, there is no assurance against a retightening of state restrictions—as happened with the Eastern Region of the Commonwealth in Executive Order 68, issued on July 28 and not lifted until September 10.

Although the Governor's executive orders have typically included exceptions for the operation of government and for access to essential services for low-income residents, the County has nonetheless endeavored to observe and encourage sound public health and safety practices in all its operations. Between the Governor's executive orders and state guidelines for all business sectors, the practices required or recommended involve such measures as physical distancing, enhanced cleaning and disinfection, health screening, occupancy limits, and other limits on the size of groups. Together, these practices significantly increase the amount of space needed for various activities.

Executive Order 68, like earlier such orders, recognizes the need "to protect the health, safety, and well-being of Virginians experiencing homelessness during this pandemic."

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To that end, the Hypothermia Prevention Program is an integral part of Fairfax County's Housing Crisis Response System. Serving over 1,000 people who seek shelter from cold every winter, the program operates from November through March. It operates in some full-time emergency shelters and a series of overflow shelters, the latter typically located in churches and County-owned or -leased buildings. In past years, faith communities have typically provided temporary hypothermia prevention shelters. But in the pandemic, they face new challenges that render them either unable to participate in the program or able to do so only at significantly reduced capacity. To accommodate COVID-related protective measures and a potential increase in the number of people needing this service, the County anticipates enlarging the program to include more locations and larger facilities. Given the imminent cold weather, it is impractical to subject those sites to the time-consuming, individualized approval processes that might ordinarily apply. This ordinance will extend the approval of these shelters provided by the emergency ordinance and add one new location to the list of potential shelter sites.

Similarly, the Governor's executive orders subject a wide range of businesses to requirements that might necessitate various modifications to uses, activities, and structures. In a separate ordinance, the Board addressed these impacts on restaurants and exercise facilities. But these requirements have broader impacts, and we might face additional requirements in the future. In the midst of the COVID 19 emergency, the cost and time to meet such requirements would compound the stress on economically challenged businesses, hinder opportunities to revitalize the County's economy, and risk the closure of such businesses. At the same time, processing and deciding such a multitude of applications on an urgent basis would be extremely difficult, if not impossible, for the County government and would consume extraordinary amounts of time and attention on the part of the County's staff and its deliberative bodies, at a time when they are also strained by the emergency. These factors, separately and collectively, would threaten the County's continuity in government.

The Board of Supervisors has expressed its desire to remove unnecessary obstacles to businesses that seek to stay in business while following state and other governmental COVID-related requirements. To that end, this ordinance would suspend any proffer, development condition, or ordinance provision to the extent it would otherwise preclude a temporary modification to an activity, use, or structure where the Zoning Administrator determines the modification is needed to comply with state or other governmental COVID-related guidelines and requirements. Given existing and potential state requirements, the unknown scope of modifications they might prompt, the importance of business continuity to the County's economic success, the time-consuming nature of governmental approvals those modifications would typically require, and the potentially high volume of applications, this ordinance is needed to establish a clear, simple

Board Agenda Item
November 17, 2020

process for determining the permissibility of such modifications under zoning regulations. Without such a process, there would likely be increased noncompliance, leading to yet more avoidable expenditures of staff time and resources to enforce.

Virginia Code § 15.2-1413 expressly authorizes the adoption of the attached ordinance, which provides a means for assuring continuity in County government by on multiple fronts. By enabling the County's Hypothermia Prevention Program to address the unique challenges presented by the COVID-19 emergency, the ordinance furthers an essential function of local government—to protect and preserve the health and safety of its citizens. And by authorizing the Zoning Administrator to approve use modifications needed to meet similar challenges to the private sector, the ordinance will also advance public health, safety, and welfare—without unduly burdening the various agencies and deliberative bodies that would be involved in processing and approving countless individualized applications.

FISCAL IMPACT:

Adoption of the proposed ordinance has no fiscal impact. Implementation of hypothermia shelters will include security and operations costs that would have otherwise been borne by the county's community partners. Staff will advise the Board with respect to any further fiscal impact, beyond already appropriated funds, as that information becomes available.

ENCLOSED DOCUMENTS:

Attachment 1— Uncodified Ordinance to Provide a Method to Assure Continuity in Fairfax County Government During the COVID-19 Emergency, as Authorized by Virginia Code § 15.2-1413, by Approving Temporary County-Operated Hypothermia Prevention Shelters and Authorizing a Streamlined Process for Approving Temporary Use Modifications in Response to the Emergency, and to Repeal the Emergency Uncodified Ordinance on the Same Subject, Which Was Adopted on October 6, 2020, and Is Hereby Replaced by This Ordinance

STAFF:

Tisha Deeghan, Deputy County Executive
Barbara A. Byron, Director, Department of Planning and Development (DPD)
Thomas E. Fleetwood, Director, Department of Housing and Community Development (HCD)
Thomas M. Barnett, Deputy Director, HCD
John L. Walser, Battalion Chief, Fire and Rescue Department

Board Agenda Item
November 17, 2020

Brian F. Foley, P.E., C.B.O., Building Official, Department of Land Development
Services (LDS)
Leslie B. Johnson, Zoning Administrator, DPD

ASSIGNED COUNSEL:

Elizabeth D. Teare, County Attorney
T. David Stoner, Deputy County Attorney

AN UNCODIFIED ORDINANCE TO PROVIDE A METHOD TO ASSURE CONTINUITY IN FAIRFAX COUNTY GOVERNMENT DURING THE NOVEL CORONAVIRUS DISEASE 2019 (COVID-19) EMERGENCY BY APPROVING TEMPORARY COUNTY-OPERATED HYPOTHERMIA SHELTERS AND AUTHORIZING A STREAMLINED PROCESS FOR APPROVING TEMPORARY USE MODIFICATIONS IN RESPONSE TO THE EMERGENCY, AND TO REPEAL THE EMERGENCY ORDINANCE ON THE SAME SUBJECT ADOPTED ON OCTOBER 6, 2020, WHICH IS HEREBY REPLACED

AN UNCODIFIED ORDINANCE to provide a method to assure continuity in Fairfax County government during the COVID-19 Emergency, as authorized by Virginia Code § 15.2-1413, by approving temporary County-operated hypothermia prevention shelters and authorizing a streamlined process for approving temporary use modifications in response to the emergency, and to repeal the emergency uncodified ordinance on the same subject, which was adopted on October 6, 2020, and is hereby replaced by this ordinance.

Be it ordained by the Board of Supervisors of Fairfax County:

1. That the following uncodified ordinance is hereby adopted:

A. Purpose of the Ordinance.

This ordinance is intended to provide a method to assure continuity in Fairfax County government during the COVID-19 emergency. Fairfax County government comprises not only the Board of Supervisors, but also numerous County agencies and deliberative bodies that fulfill essential government functions and provide essential government services within the locality. These provisions are intended to sustain the County’s economy and ensure the continued ability of County agencies and deliberative bodies to carry out their functions during this emergency without compromising public health, safety, and welfare.

This ordinance is being adopted in response to the COVID-19 outbreak. The World Health Organization declared COVID-19 a global pandemic on March 11, 2020. On March 13, 2020, the President of the United States declared that the COVID-19 outbreak in the United States constitutes a National Emergency beginning March 1, 2020. On March 12, 2020, Governor Ralph Northam issued a Declaration of a State of Emergency due to Novel Coronavirus (COVID-19). The Governor declared the emergency “to continue to prepare and coordinate our response to the potential spread of COVID-19, a communicable disease of public health threat” and he found that “[t]he anticipated effects of COVID-19 constitute a disaster as described in § 44-146.16 of the Code of Virginia.” The Governor’s Declaration of a State of Emergency remains in

39 effect indefinitely, until amended or rescinded. Effective March 16, 2020, Governor
40 Northam and the State Health Commissioner jointly issued an Order declaring a state
41 public health emergency. On March 17, 2020, the Fairfax County Director of
42 Emergency Management, with the consent of the Board of Supervisors, declared a local
43 state of emergency due to the potential spread of COVID-19. The local Declaration of
44 Emergency remains in effect until the Board of Supervisors takes appropriate action to
45 end the declared emergency.

46 The Public Health Emergency Order issued jointly by the Governor and the State Health
47 Commissioner effective March 16, 2020, consistent with all other expert opinions,
48 observes that COVID-19 spreads from person to person, transmitted via respiratory
49 droplets, and can be spread from an infected person who does not have symptoms to
50 another person. The Order states that no vaccine or known treatment options exist at
51 this time.

52 On March 23, 2020, the Governor issued Executive Order 53, which ordered all public
53 and private schools closed for the remainder of the 2019–20 school year and imposed
54 temporary restrictions on restaurants, recreational entertainment, public and private
55 gatherings, and non-essential retail businesses. By virtue of amendments on April 15
56 and May 4, 2020, the restrictions on restaurants and non-essential businesses
57 remained in effect until May 14, 2020. On March 30, 2020, the Governor issued
58 Executive Order 55, which ordered all individuals in Virginia to remain at their places of
59 residence until June 10, 2020, except as set forth in that order and Executive Order 53.

60 On May 8, 2020, the Governor issued Executive Order 61, introducing Phase One in the
61 state’s strategy to ease some of the temporary restrictions instituted in Second
62 Amended Executive Order 53 and Executive Order 55 (orders referred to collectively as
63 Phase Zero). On May 12, 2020, the Governor issued Executive Order 62 extending
64 Phase Zero for Northern Virginia through May 28, 2020. That order was amended on
65 May 14, 2020, to extend Phase Zero for certain other jurisdictions.

66 The Governor allowed Amended Executive Order 62 to expire, moving Northern Virginia
67 into Phase One on May 28, 2020. In Executive Order 65, issued on June 2, the
68 Governor ordered that most of the Commonwealth, but not including Northern Virginia,
69 would move into Phase Two on June 5. On June 9, 2020, the Governor amended
70 Executive Order 65 to order Northern Virginia’s entry into Phase Two on June 12.

71 In Executive Order 67, issued on June 30, the Governor ordered the Commonwealth’s
72 entry into Phase Three. While Phase Three further relaxed restrictions on activities,
73 they are not completely lifted. In addition, there is no assurance against a retightening
74 of state restrictions—as happened with the Eastern Region of the Commonwealth in
75 Executive Order 68, issued on July 28 and not lifted until September 10.

76 Although the Governor’s executive orders have typically included exceptions for the
77 operation of government and for access to essential services for low-income residents,
78 the County has nonetheless endeavored to observe and encourage sound public health
79 and safety practices in all its operations. Between the Governor’s executive orders and
80 state guidelines for all business sectors, the practices required or recommended involve
81 such measures as physical distancing, enhanced cleaning and disinfection, health
82 screening, occupancy limits, and other limits on the size of groups. Together, these
83 practices significantly increase the amount of space needed for various activities.

84 Executive Order 68, like earlier such orders, recognizes the need “to protect the health,
85 safety, and well-being of Virginians experiencing homelessness during this pandemic.”
86 To that end, the Hypothermia Prevention Program is an integral part of Fairfax County’s
87 Housing Crisis Response System. Serving over 1,000 people who seek shelter from
88 cold every winter, the program operates from November through March. It operates in
89 some full-time emergency shelters and a series of overflow shelters, the latter typically
90 located in churches and County-owned or -leased buildings. In past years, faith
91 communities have typically provided temporary hypothermia prevention shelters. But in
92 the pandemic, they face new challenges that render them either unable to participate in
93 the program or able to do so only at significantly reduced capacity. To accommodate
94 COVID-related protective measures and a potential increase in the number of people
95 needing this service, the County anticipates enlarging the program to include more
96 locations and larger facilities. Given the imminent cold weather, it is impractical to
97 subject those sites to the time-consuming, individualized approval processes that might
98 ordinarily apply.

99 Similarly, the Governor’s executive orders subject a wide range of businesses to
100 requirements that might necessitate various modifications to uses, activities, and
101 structures. In a separate ordinance, the Board addressed these impacts on restaurants
102 and exercise facilities. But these requirements have broader impacts, and we might face
103 additional requirements in the future. In the midst of the COVID-19 emergency, the cost
104 and time to meet such requirements would compound the stress on economically
105 challenged businesses, hinder opportunities to revitalize the County’s economy, and
106 risk the closure of such businesses. At the same time, processing and deciding such a
107 multitude of applications on an urgent basis would be extremely difficult, if not
108 impossible, for the County government and would consume extraordinary amounts of
109 time and attention on the part of the County’s staff and its deliberative bodies, at a time
110 when they are also strained by the emergency. These factors, separately and
111 collectively, would threaten the County’s continuity in government.

112 The Board of Supervisors desires to remove unnecessary obstacles to businesses that
113 seek to stay in business while following state and other governmental COVID-related
114 requirements. To that end, this ordinance—like the emergency ordinance it replaces—
115 suspends any proffer, development condition, or ordinance provision to the extent it
116 would otherwise preclude a temporary modification to an activity, use, or structure

117 where the Zoning Administrator determines the modification is needed to comply with
118 state or other governmental COVID-related guidelines and requirements. Given
119 existing and potential state requirements, the unknown scope of modifications they
120 might prompt, the importance of business continuity to the County’s economic success,
121 the time-consuming nature of governmental approvals those modifications would
122 typically require, and the potentially high volume of applications, this ordinance is
123 needed to establish a clear, simple process for determining the permissibility of such
124 modifications under zoning regulations. Without such a process, there would likely be
125 increased noncompliance, leading to yet more avoidable expenditures of staff time and
126 resources to enforce.

127 It is not the intent of this ordinance to infringe on the ability of any town—Clifton,
128 Herndon, or Vienna—to provide a method to assure continuity in its own government.
129 For that reason, the ordinance will not apply in any of those towns unless and until the
130 town’s governing body, by ordinance, decides to be subject to this ordinance.

131 **B. Virginia Statutory Authority for the Ordinance.**

132 Virginia Code § 15.2-1413 authorizes localities to adopt an ordinance to “provide a
133 method to assure continuity in its government, in the event of an enemy attack or other
134 disaster,” “[n]otwithstanding any contrary provision of law, general or special.” The
135 Governor’s Declaration of a State of Emergency found that “[t]he anticipated effects of
136 COVID-19 constitute a disaster as described in § 44-146.16 of the Code of Virginia.”

137 The Virginia Attorney General has defined “continuity in government” as coordinated
138 efforts undertaken to assure the continuation of local government’s essential functions
139 during an emergency.

140 **C. Definitions.**

141 “Continuity in Fairfax County government” includes, without limitation, those actions,
142 and the coordination of actions, that are necessary to assure the continuation of the
143 County’s essential functions and services. By way of example and not limitation, such
144 necessary actions include those related to (1) the County’s finances, such as the public
145 hearings and adoption of the FY 2021 budget, tax rate, and utilities fees; appropriations
146 of funds; and funding requests; (2) contracts that need Board action; (3) applications,
147 appeals, or other requests that are subject to mandatory or directory time frames for
148 action; (4) satisfying due process or other constitutional requirements; (5) public health
149 and safety; and (6) measures that help sustain the County’s economy.

150 “Emergency” means the outbreak of the respiratory illness referred to as the novel
151 coronavirus or COVID-19, as described in the Governor’s Declaration of a State of
152 Emergency and the local Declaration of Emergency, and the spread and effects of
153 COVID-19, which constitute a disaster as defined in Virginia Code § 44-146.16.

154 “Hypothermia prevention shelter” means any facility that provides a temporary shelter
155 for people experiencing homelessness, does not require occupants to sign leases or
156 occupancy agreements, and is operated by Fairfax County during the fall and winter
157 seasons to prevent injury, illness, and death due to cold weather. This use includes
158 providing transportation to or from the shelter via van or other means; space for
159 overnight stays; warming centers during the day; and provision of meals or other food to
160 shelter occupants, staff, and volunteers.

161 “Temporary” means not exceeding the period this ordinance is in effect.

162 “Zoning Administrator” means the County’s Zoning Administrator or her designee within
163 the Department of Planning and Development.

164 **D. Hypothermia prevention shelters.**

165 1. The Board of Supervisors hereby approves the establishment of one or more
166 temporary, hypothermia prevention shelters on any of the sites identified in
167 **Appendix A** from November 1, 2020, until April 1, 2021. The use in such a
168 location is hereby deemed a feature shown on the Comprehensive Plan. No
169 further administrative approval, proffer condition amendment, special exception
170 amendment, special permit amendment, or any other development approval is
171 required as long as the hypothermia prevention shelter complies with all of the
172 conditions of this ordinance.

173 2. For purposes of this ordinance, the Board hereby temporarily suspends any
174 proffer, development condition, or ordinance provision that would otherwise
175 restrict the establishment of a hypothermia shelter under this ordinance.

176 3. Any hypothermia prevention shelter established under this ordinance or the prior
177 emergency ordinance must operate primarily within one or more existing
178 buildings.

179 4. Operating a hypothermia prevention shelter changes the application of the state
180 building code such that the facility would temporarily become one of transient
181 overnight housing. In doing so, additional life safety measures apply. Review,
182 inspection, and approval of each building, or portion thereof, by the building
183 official and fire official is required to ensure that the temporary use is safe and
184 meets the spirit and functional intent of the current Uniform Statewide Building
185 Code. Approval is not guaranteed and may be conditional, such as, but not
186 necessarily limited to, requiring the installation of smoke and carbon monoxide
187 detectors/alarms, requiring panic hardware on doors, and limiting the occupant
188 load.

189 **E. Temporary, COVID-necessitated use modifications.**

- 190 1. The Board of Supervisors hereby suspends any proffer, development condition,
191 or ordinance provision to the extent it would otherwise preclude a temporary
192 modification to an activity, use, or structure where the Zoning Administrator
193 determines the modification is needed to comply with state or other governmental
194 COVID-related guidelines and requirements. In making such a determination the
195 Zoning Administrator may impose reasonable conditions. Any request for a
196 modification must be submitted in writing to the Zoning Administrator, who may
197 require additional submission material.
- 198 2. This provision does not generally apply to property zoned to any R district or to
199 the residential portion of any P district; however, it does apply to any public use,
200 child care center, independent or assisted living facility, school, place of worship,
201 or other place of public assembly.
- 202 3. The Zoning Administrator may revoke an approval given under this ordinance or
203 the prior emergency ordinance if the Zoning Administrator determines that an
204 establishment is being operated in a manner that is inconsistent with the
205 approval or that otherwise adversely impacts the health, safety, and welfare of
206 the community.

207 **F. Scope of Application.**

208 It is not the intent of this ordinance to infringe on the ability of any town—Clifton,
209 Herndon, or Vienna—under Virginia Code § 15.2-1413 to provide a method to assure
210 continuity in its own government. For that reason, the ordinance will not apply in any of
211 those towns unless and until the town’s governing body, by ordinance, decides to be
212 subject to this ordinance.

213 **G. Supersession of Inconsistent Requirements.**

214 The provisions of this Ordinance apply notwithstanding any contrary provision of law,
215 general or special, as authorized in Virginia Code § 15.2-1413.

- 216 **2. That this ordinance will become effective upon adoption.**
- 217 **3. That this ordinance will remain in effect no longer than six months after the**
218 **Board of Supervisors terminates the local Declaration of Emergency. Within**
219 **that six-month period, the Board will resume normal governmental authority in**

220 accordance with Virginia Code § 15.2-1413 by repealing this ordinance in
221 compliance with Virginia Code § 15.2-1427.

222 4. That the Clerk for the Board of Supervisors will schedule a public hearing for
223 November 17, 2020, at which the Board will consider readopting this ordinance
224 or a similar ordinance that assures continuity in Fairfax County Government
225 during the COVID-19 pandemic. Any such ordinance will be limited in its
226 effect to a period not exceeding six months after the emergency and will
227 provide for a method for the resumption of normal governmental authority by
228 the end of the six-month period. The Clerk will publish descriptive notice of
229 the Board's intention to propose the ordinance for passage once a week for
230 two successive weeks in accordance with Virginia Code §§ 15.2-1427
231 and -2204.

232 5. That the sections, subsections, paragraphs, sentences, clauses, phrases, and
233 words of this ordinance are severable. If any section, subsection, paragraph,
234 sentence, clause, phrase, or word is declared unconstitutional or otherwise
235 invalid by the lawful judgment or decree of any court of competent
236 jurisdiction, its unconstitutionality or invalidity shall not affect the validity of
237 any of the remaining sections, subsections, paragraphs, sentences, clauses,
238 phrases, and words of this ordinance, since the same would have been
239 enacted by the Board of Supervisors without and irrespective of any
240 unconstitutional or otherwise invalid section, subsection, paragraph,
241 sentence, clause, phrase or word being included.

242 6. That the emergency ordinance on the same subject adopted on October 6,
243 2020, as authorized by Virginia Code §§ 15.2-1413 and -1427, is repealed and
244 replaced by this ordinance.

245 GIVEN under my hand this _____ day of _____ 2020.

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Jill G. Cooper
Clerk for the Board of Supervisors
Department of Clerk Services

**AN UNCODIFIED ORDINANCE TO PROVIDE A METHOD TO ASSURE CONTINUITY
IN FAIRFAX COUNTY GOVERNMENT DURING THE NOVEL CORONAVIRUS
DISEASE 2019 (COVID-19) EMERGENCY BY APPROVING TEMPORARY COUNTY-
OPERATED HYPOTHERMIA SHELTERS AND AUTHORIZING A STREAMLINED
PROCESS FOR APPROVING TEMPORARY USE MODIFICATIONS IN RESPONSE
TO THE EMERGENCY, AND TO REPEAL THE EMERGENCY ORDINANCE ON THE
SAME SUBJECT ADOPTED ON OCTOBER 6, 2020, WHICH IS HEREBY
REPLACED**

Appendix A

Potential Hypothermia Prevention Shelter Sites by Human Services Region

Region 1:

1. South County Building – 8350 Richmond Highway, Alexandria, VA 22309

Region 2:

2. Lincolnia Senior Center – 4710 N Chambliss Street, Alexandria, VA 22312

Region 3:

3. North County Human Services Building – 1850 Cameron Glen Drive, Reston, VA 20190

Region 4:

4. Braddock Glen (Senior Center) – 4027-B Olley Lane, Fairfax, VA 22032

Countywide Backup:

1. Government Center – 12000 Government Center Parkway, Fairfax, VA 22035
2. Pennino Building – 12011 Government Center Parkway, Fairfax, VA 22035
3. Herrity Building – 12055 Government Center Parkway, Fairfax, VA 22035
4. Former Container Store – 8508 Leesburg Pike, Vienna, VA 22182

Board Agenda Item
November 17, 2020

3:00 p.m.

Decision Only on RZ 2019-HM-011 (Sakthivel Chinnasamy and Nandakumar Sreenivasan) to Rezone from R-1 to R-3 to Permit Residential Development with a Total Density of 2.85 Dwelling Units per Acre, Located on Approximately 1.05 Acres of Land (Hunter Mill District)

This property is located on the N. side of Old Courthouse Rd., approx. 300 ft. E. of Irvin St. Tax Map 28-4 ((1)) 28.

On September 29, 2020, the Board of Supervisors held the public hearing and deferred decision on this case to a date certain of October 20, 2020. On October 20, 2020, the Board furthered deferred the decision only on this application to November 17, 2020, at 3:00 p.m.

PLANNING COMMISSION RECOMMENDATION:

On July 22, 2020, the Planning Commission voted 11-0-1 (Commissioner Strandlie abstained from the vote) to recommend to the Board of Supervisors denial of RZ 2019-HM-011. Furthermore, the Planning Commission voted 11-0-1 (Commissioner Strandlie abstained from the vote) to recommend that the Land Use Map and the text in the Comprehensive Plan should be revised as soon as possible to indicate that the density for all the lots along Irvin Street should be recommended for 1-2 dwelling units per acre, as indicated in the Plan Text, instead of the 2-3 dwelling units per acre shown on the Plan Map.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)
Joe Onyebuchi, Planner, DPD

Board Agenda Item
November 17, 2020

3:00 p.m.

Public Hearing on SE 2019-MA-014 (Lora L. Seeds) to Permit a Waiver of Minimum Lot Width Requirements, Located on Approximately 1.21 Acres of Land Zoned R-3 (Mason District)

This property is located at 5824 Dawes Ave., Alexandria, 22311. Tax Map 61-4 ((1)) 149.

PLANNING COMMISSION RECOMMENDATION:

On October 7, 2020, the Planning Commission voted 12-0 to recommend to the Board of Supervisors approval of SE 2019-MA-014, subject to the proposed development conditions dated October 6, 2020.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:

<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)

Emma Estes, Planner, DPD

Board Agenda Item
November 17, 2020

3:00 p.m.

Public Hearing on SEA 2018-MA-008 (Trustees of Lincolnia United Methodist Church and Luca's Rainbow Bilingual Preschool LLC) to Amend SE 2018-MA-008, Previously Approved for a Place of Worship with a Child Care Center, to Add Land Area and Modify Development Conditions and Associated Modifications to Site Design, Located on Approximately 2.85 Acres of Land Zoned R-2 and HC (Mason District)

This property is located at 6323 and 6335 Little River Turnpike, Alexandria, 22312. Tax Map 72-3 ((1)) 60 and 72-4 ((1)) 10.

PLANNING COMMISSION RECOMMENDATION:

On October 7, 2020, the Planning Commission voted 12-0 to recommend to the Board of Supervisors the following actions:

- Approval of SEA 2018-MA-008, subject to the proposed development conditions dated September 22, 2020;
- Reaffirmation of the waiver of Par. 1 of Sect. 13-202 of the Zoning Ordinance for the interior parking lot landscaping requirement in favor of the existing conditions;
- Reaffirmation of the modification of Sect. 13-302 of the Zoning Ordinance for the transitional screening and barrier requirements along the eastern, southern and western boundaries in favor of the existing conditions, as shown on the SEA Plat; and
- Waiver of Pars. 2 and 3 of Sect. 17-201 of the Zoning Ordinance of the construction requirements for the planned major paved trail and service drive along Little River Turnpike in favor of that shown on the SEA Plat.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:

<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)

Zach Fountain, Planner, DPD

Board Agenda Item
November 17, 2020

3:30 p.m.

Public Hearing on RZ 2019-SP-014 (Brightview Senior Living Development, LLC) to Rezone from R-1 and WS to PDH-4 and WS to Permit Additional Land Area for an Independent Living and Assisted Living Facility with No Increase in Density or Intensity, Located on Approximately 0.16 Acres of Land (Springfield District) (Concurrent with PCA/CDPA 2017-SP-017)

and

Public Hearing on PCA/CDPA 2017-SP-017 (Brightview Senior Living Development, LLC) to Amend the Proffers and Conceptual Development Plan for RZ 2017-SP-017, Previously Approved for an Independent Living and Assisted Living Facility, to Permit an Independent Living and Assisted Living Facility and Associated Modifications to Proffers and Site Design at a Density of 15.16 Dwelling Units per Acre and a Floor Area Ratio of 0.21, Located on Approximately 5.62 Acres of Land Zoned PDH-4 and WS (Springfield District) (Concurrent with RZ 2019-SP-014)

This property is located on the S. side of Lee Hwy. approx. 450 ft. W. of Summit Dr. Tax Map 55-4 ((1)) 36B.

This property is located on the S. side of Lee Hwy. approx. 450 ft. W. of its intersection with Summit Dr. Tax Map 55-4 ((1)) 31A.

On April 14, 2020, the Board of Supervisors deferred this public hearing to June 23, 2020, at 3:30 p.m. On June 23, 2020, the Board of Supervisors deferred this public hearing to November 17, 2020, at 3:30 p.m.

PLANNING COMMISSION RECOMMENDATION:

On February 26, 2020, the Planning Commission voted 11-0 (Commissioner Clarke was absent from the vote) to recommend to the Board of Supervisors the following actions:

- Approval of RZ 2019-SP-014 and the associated Conceptual Development Plan (CDP), CDP 2019-SP-014, subject to the execution of proffered conditions consistent with those dated February 26, 2020;

Board Agenda Item
November 17, 2020

- Approval of PCA 2017-SP-017 and the associated Conceptual Development Plan Amendment (CDPA), CDPA 2017-SP-017, subject to the execution of proffered conditions consistent with those dated February 26, 2020;
- Modification of Par. 3 of Sect. 13-305 of the Zoning Ordinance to modify the transitional screening planting requirements along the western property line in favor of using the existing vegetation supplemented with the proposed plantings as shown on the CDP/FDP/CDPA/FDPA;
- Modification of Par. 3 of Sect. 13-305 of the Zoning Ordinance to modify the placement of the barrier requirement to the periphery of the western property line as shown on the CDP/FDP/CDPA/FDPA;
- Reaffirmation of the modification of Par. 3 of Sect. 13-305 of the Zoning Ordinance to modify the transitional screening planting requirements along the northern, southern, and eastern property lines in favor of using the existing vegetation supplemented with the proposed plantings as shown on the CDP/FDP/CDPA/FDPA;
- Reaffirmation of the modification of Par. 3 of Sect. 13-305 of the Zoning Ordinance to modify the placement of the barrier requirement to the periphery of the eastern and southern property line as shown on the CDP/FDP/CDPA/FDPA;
- Reaffirmation of the waiver of Par. 3 of Sect. 13-305 of the Zoning Ordinance to waive the barrier requirement along the northern property line;
- Reaffirmation of the modification of Par. 13 of Section 11-203 of the Zoning Ordinance to modify the loading space requirement for three loading spaces in lieu of that shown on the CDP/FDP/CDPA/FDPA;
- Reaffirmation of the modification of Pars. 2 and 3 of Sect. 17-201 of the Zoning Ordinance of the construction requirements for the shared use path and service drive along Lee Highway in lieu of that shown on the CDP/FDP/CDPA/FDPA;
- Reaffirmation of the waiver of Par. 3 of Section 17-201 of the Zoning Ordinance to waive the requirement to provide interparcel access to east and west in lieu of the service drive as shown on the CDP/FDP/CDPA/FDPA; and
- Reaffirmation of the waiver of Par. 2 of Sect. 17-201 of the Zoning Ordinance to waive the requirement to construct a sidewalk along Lee Highway in lieu of the Shared Use Path as shown on the CDP/FDP/CDPA/FDPA.

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November 17, 2020

In a related action, the Planning Commission voted 11-0 (Commissioner Clarke was absent from the vote) to approve FDP 2019-SP-014 and FDPA 2017-SP-017, subject to the development conditions dated February 5, 2020.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:

<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)

Kelly Atkinson, Planner, DPD

3:30 p.m.

Public Hearing on RZ 2020-SU-006 (Cape Theresa, LLC) to Rezone from I-3 and I-5, WS, and AN to I-5, WS and AN to Permit a Contractor's Office and a Materials Storage Yard with an Overall Floor Area Ratio of 0.09, Located on Approximately 3.04 Acres of Land (Sully District)

This property is located in the N.E. quadrant of Murdock St. (Rt. 668) and Glorus Rd. Tax Map 33-2 ((2)) 15 and 16A.

PLANNING COMMISSION RECOMMENDATION:

On November 12, 2020, the Planning Commission voted 11-0 (Commissioner Strandlie was absent from the meeting) to recommend to the Board of Supervisors approval of RZ 2020-SU-006, subject to the execution of proffered conditions consistent with those dated October 27, 2020.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)
Sharon Williams, Planner, DPD

Board Agenda Item
November 17, 2020

3:30 p.m.

Public Hearing on PCA 86-W-001-13/CDPA 86-W-001-04 (Board of Supervisors of Fairfax County) to Amend the Proffers and Conceptual Development Plan for RZ 86-W-001, Previously Approved for Governmental Center, Office, Commercial, and Residential, to Permit a Public Facility and Associated Modifications to Proffers and Site Design at a Floor Area Ratio of 0.078, Located on Approximately 0.99 Acres of Land Zoned PDC (Braddock District) (Concurrent with PCA 87-S-039-07 and CDPA 87-S-039-02)

and

Public Hearing on PCA 87-S-039-07/CDPA 87-S-039-02 (Board of Supervisors of Fairfax County) to Amend the Proffers and Conceptual Development Plan for RZ 87-S-039, Previously Approved for a Mixed-Use Development, to Permit a Public Facility and Associated Modifications to Proffers and Site Design at a Floor Area Ratio of 0.078, Located on Approximately 2.83 Acres of Land Zoned PDC (Braddock District) (Concurrent with PCA 86-W-001-13 and CDPA 86-W-001-04)

This property is located on the S. side of Random Hills Rd. and N. side of Monument Dr. Tax Map 56-1 ((15)) 4.

This property is located on the S. side of Random Hills Rd., W. side of Government Center Pkwy. and N. side of Monument Dr. Tax Map 56-1 ((1)) 47C.

On September 29, 2020, the Board of Supervisors deferred this public hearing to November 17, 2020, at 3:30 p.m.

PLANNING COMMISSION RECOMMENDATION:

On November 4, 2020, the Planning Commission voted 11-0 (Commissioner Strandlie was absent from the meeting) to recommend to the Board of Supervisors the following actions:

- Approval of PCA 86-W-001-13 and the associated Conceptual Development Plan, CDPA 86-W-001-04, subject to the execution of proffered conditions consistent with those dated October 29, 2020;

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- Approval of PCA 87-S-039-07 and the associated Conceptual Development Plan, CDPA 87-S-039-02, subject to the execution of proffered conditions consistent with those dated October 29, 2020;
- Modification of Sect. 2-505 of the Zoning Ordinance to the sight distance requirements to allow certain structures, as shown on the CDPA/FDPA;
- Modification of Sect. 2-506-1A of the Zoning Ordinance to allow an accessory structure on a building roof to occupy an area greater than 25 percent of the total roof area as shown on the CDPA/FDPA;
- Modification of Sect. 2-506-2 of the Zoning Ordinance to allow a parapet wall, cornice or similar projections to exceed three feet above the roof of the building as shown on the CDPA/FDPA; and
- Modification of Sect. 13-203 of the Zoning Ordinance to modify the 10-foot peripheral parking lot landscaping requirement, in favor of that depicted on the CDPA/FDPA.

In related actions, the Planning Commission voted 11-0 (Commissioner Strandlie was absent from the meeting) to:

- Approve FDPA 86-W-001-08, subject to the proposed development conditions dated August 28, 2020, and the Board of Supervisors' approval of the concurrent PCA application, PCA 86-W-001-13;
- Approve FDPA 87-S-039-11, subject to the proposed development conditions dated August 28, 2020, and the Board of Supervisors' approval of the concurrent PCA application, PCA 87-S-039-07; and
- Find that the transit center proposed under 2232-B19-9 satisfies the criteria of location, character, and extent, as specified in Sect. 15.2-2232 of the *Code of Virginia*, as amended, and therefore, is substantially in accord with the Comprehensive Plan.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:
<https://www.fairfaxcounty.gov/planning-development/board-packages>

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STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development
(DPD)

Zach Fountain, Planner, DPD

Board Agenda Item
November 17, 2020

3:30 p.m.

Public Hearing on PCA 78-S-063-08 (Stanley Martin Companies, LLC) to Amend the Proffers for RZ 78-S-063, Previously Approved for Office, to Delete 12.04 Acres to be Included in Concurrent RZ 2019-SU-005, Located on Approximately 12.04 Acres of Land Zoned I-3, WS and AN (Sully District) (Concurrent with RZ 2019-SU-005)

and

Public Hearing on RZ 2019-SU-005 (Stanley Martin Companies, LLC) to Rezone from I-3, WS, and AN to PDH-16, WS, and AN to Permit Residential Development with an Overall Density of 11.13 Dwelling Units per Acre, Including Bonus Density for the Provision of Affordable Dwelling Units, and Approval of the Conceptual Development Plan, Located on Approximately 12.04 Acres of Land (Sully District) (Concurrent with PCA 78-S-063-08)

This property is located on the E. side of Westfields Blvd. and N. side of Newbrook Dr. Tax Map 44-1 ((8)) 5 and 6.

PLANNING COMMISSION RECOMMENDATION:

On October 7, 2020, the Planning Commission voted 9-3 (Commissioners Carter, Strandlie, and Cortina voted in opposition) to recommend to the Board of Supervisors the following actions:

- Approval of PCA 78-S-063-08;
- Approval of RZ 2019-SU-005 and the associated Conceptual Development Plan, subject to the execution of proffered conditions consistent with those dated August 27, 2020;
- Modification of Par. 2 of Sect. 6-107 of the Zoning Ordinance to modify the minimum 200 square foot privacy yard for the rear loaded single-family attached dwellings in lieu of community open space, as shown on the CDP/FDP;
- Waiver of Par. 5 of Sect. 11-203 of the Zoning Ordinance to omit loading space requirements for the multi-family units, which are proposed to resemble single-family attached structures;

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- Modification of Par. 2 of Sect. 11-302 of the Zoning Ordinance to permit private streets in the proposed development to exceed the maximum 600-foot length limitation, as shown on the CDP/FDP;
- Waiver of the transitional screening requirements between multi-family and single family attached uses, as set forth in Sect. 13-300 of the Zoning Ordinance; and
- Waiver of Par. 2 of Sect. 17-201 of the Zoning Ordinance requiring a major paved trail per the Comprehensive Plan Trails Plan Map in favor of the existing trails as shown on the CDP/FDP.

In a related action, the Planning Commission voted 9-3 (Commissioners Carter, Strandlie, and Cortina voted in opposition) to approve FDP 2019-SU-005, subject to the proposed development conditions dated September 2, 2020.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)
Katelyn Quinn, Planner, DPD

Board Agenda Item
November 17, 2020

4:00 p.m.

Public Hearing on Proposed Plan Amendment 2019-III-FC1, Fair Oaks Mall, Located Northwest of the Interstate 66 and U.S. Route 50 Interchange (Springfield District)

ISSUE:

Plan Amendment (PA) 2019-III-FC1 considers amending the Comprehensive Plan recommendation for Tax Map Parcels 46-3 ((8)) 1A, 1C, 1D, 2, 4A, 5, 6, 6A, 7, 10, 11, 13, 46-4 ((9)) 8, 56-1 ((12)) 9, 14, the 109.5-acre Fair Oaks Mall property, planned within Subunit A-1 of the Fairfax Center Area. The site-specific Plan guidance for the subject area recommends a mixture of residential, retail, hotel and office uses integrated with the mall, with multiple levels of intensity up to a 1.0 floor area ratio (FAR) at the Overlay level. The highest levels of intensity are conditioned on major roadway and mass transit improvements, including the availability of Bus Rapid Transit (BRT) or a Metrorail extension from the Vienna Metrorail Station, along Interstate 66. The amendment considers replacing the adopted guidance with a single overlay recommendation for mixed-use redevelopment up to 1.0 FAR, with a higher percentage of residential use and less retail use, as well as revisions to other conditions for redevelopment.

PLANNING COMMISSION RECOMMENDATION:

On September 16, 2020, the Planning Commission voted 12-0 to recommend that the Board of Supervisors adopt the staff recommendation presented on pages 17 to 29 of the staff report for PA 2019-III-FC1, dated August 26, 2020. The recommendation supports amending the site-specific Plan recommendation for the subject area to a single overlay recommendation for residential mixed-use redevelopment up to an intensity of 1.0 FAR, with no condition for major roadway or mass transit improvements tied to development intensity. Other updates to the recommendation are included to reflect and support the Core Area Vision of the Fairfax Center Area Plan, and to supplement that guidance with additional recommendations for design, stormwater management, urban parks and other county priorities.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors adopt the Planning Commission recommendation.

TIMING:

Planning Commission public hearing – September 16, 2020

Board Agenda Item
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Board of Supervisors' public hearing – November 17, 2020

BACKGROUND:

On February 5, 2019, the Board of Supervisors (Board) authorized the consideration of a Comprehensive Plan amendment for the 109.5-acre subject area. The subject property contains the Fair Oaks Mall and associated parking structures, surface parking areas, and stormwater management facilities. The Board directed staff to re-examine the conditions and improvements recommended in the Plan related to the redevelopment of the subject property for mixed use up to 1.0 FAR, including minor adjustments to the land use mix, and a focus on alternative transportation recommendations necessary to mitigate the transportation impacts of revised land uses. The proposed revisions to the Comprehensive Plan would retain the maximum planned level of development (4.8 million square feet or 1.0 FAR); however, the new mixture of land uses, with a greater emphasis of residential use, would reduce the transportation impact to a level that may be accommodated by the planned roadway network without conditions tying the development to additional major roadway or mass transit improvements.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

The Planning Commission verbatim excerpt, dated September 16, 2020, is available online at:

<https://www.fairfaxcounty.gov/planningcommission/sites/planningcommission/files/assets/documents/pdf/2020%20verbatim/verbatim091620pa2019-iii-fc1-fairoaksmall.pdf>

The Staff Report for PA 2019-III-FC1 has been previously furnished and is available

online at: <https://www.fairfaxcounty.gov/planning-development/sites/planning-development/files/assets/documents/complanamend/fairoaksmall/2019-iii-fc1-staff-report.pdf>

STAFF:

Barbara Byron, Director, Department of Planning and Development (DPD)

Leanna H. O'Donnell, Director, Planning Division (PD), DPD

Meghan Van Dam, Branch Chief, Policy & Plan Development Branch (PPDB), PD, DPD

Michael Lynskey, Planner II, PPDB, PD, DPD

Board Agenda Item
November 17, 2020

4:00 p.m.

Public Hearing on a Proposed Amendment to Chapter 104 (Erosion and Sedimentation Control) of *The Code of the County of Fairfax, Virginia* (County Code) Re: Enforcement

ISSUE:

Board of Supervisors (Board) adoption of a proposed amendment to Chapter 104 (Erosion and Sedimentation Control) of *The Code of the County of Fairfax, Virginia* (County Code) that addresses monitoring, inspections, stop work orders, penalties, injunctions, and other legal actions related to enforcement of the ordinance. The amendments are necessary to align the ordinance with our current process for issuing violations and the Virginia Erosion and Sediment Control Law and to add provisions for civil penalties.

PLANNING COMMISSION RECOMMENDATION:

On October 7, 2020, the Planning Commission recommended, by a vote of 12-0, that the Board adopt the proposed amendment to the Erosion and Sedimentation Control Ordinance as set forth in the Staff Report dated September 15, 2020.

The Planning Commission also approved a follow-on motion, by a vote of 12-0, to support additional efforts to monitor and strengthen enforcement mechanisms.

RECOMMENDATION:

The County Executive recommends that the Board adopt the proposed amendment to the Erosion and Sedimentation Control Ordinance as set forth in the Staff Report dated September 15, 2020, as recommended by the Planning Commission.

The proposed amendment has been prepared by Land Development Services (LDS) in coordination with the Office of the County Attorney.

TIMING:

Board action is requested on November 17, 2020. On September 15, 2020, the Board authorized advertising the public hearings. The Planning Commission held a public hearing on October 7, 2020. If adopted, the proposed amendments will become effective on November 18, 2020, at 12:01 a.m.

BACKGROUND:

LDS seeks to improve Chapter 104, the Erosion and Sedimentation Control Ordinance, by aligning it with enabling legislation and clarifying and strengthening the enforcement and penalty provisions. Violations of the Erosion and Sedimentation Control Ordinance are Class 1 misdemeanors, punishable by fines and jail time. LDS wishes to add civil penalties to its enforcement authority, because the long-term impact of a criminal conviction on a person's record and the need to rely on the Commonwealth's Attorney to prosecute a violation hinder enforcement efforts. Section 62.1-44.15:54.K of the Code of Virginia authorizes the County to seek civil penalties in the amount of \$100 to \$1,000 for violations of the Erosion and Sedimentation Control Ordinance or any condition of a permit. Each day during which the violation exists is a separate offense, but the total penalty may not exceed \$10,000. County staff and the County Attorney's Office will collaborate to enforce the ordinance and seek civil penalties, as appropriate. Once civil penalties are assessed by the court, criminal prosecution is precluded under the enabling legislation.

In addition to the civil penalty provisions, staff revised the ordinance to align it with Land Development Services' current process for issuing violations and incorporated changes to reflect changes in the enabling legislation that have occurred over the years.

LDS also revised the ordinance to clarify the process for inspecting and issuing violations for land disturbing activities under two scenarios: first, on a site subject to permits and an approved grading plan; and, second, when land disturbance is performed without permits or plans. The proposed revisions align the ordinance with current procedures and enabling legislation.

PROPOSED AMENDMENT:

The proposed amendment includes revisions to the provisions for monitoring, inspections, notices, stop work orders, violations, penalties, injunctions, and other legal actions related to enforcement of the ordinance.

The proposed amendment includes revisions to the following sections:

- Section 104-1-5 Monitoring and Inspections.
- Section 104-1-12 Penalties, injunctions, and other legal actions.

The revisions:

- 1) Reorganize the above sections for clarity and align the ordinance with the current process for issuing inspection reports, notices of violations, and stop work orders.

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- 2) Eliminate or revise outdated language to reflect current language in the Virginia Erosion and Sediment Control Law and associated regulations.
- 3) Add an explicit statement, new Subsection 104-1-5(c), that failure to comply with an approved plan, including any plan alterations is a violation, and the permittee or the person responsible for carrying out the plan is subject to penalties provided in the ordinance.
- 4) Delete a redundant requirement from Subsection 104-1-5(a) that an individual holding a certificate of competence, as provided by Virginia Code, § 62.1-44.15:52, will be in charge of and responsible for carrying out the land-disturbing activity. This requirement appears in two other sections of the ordinance that are not included in the amendment.
- 5) Incorporate a provision for the use of civil penalties as an option in lieu of criminal sanctions for violations of any regulation or order of the State Water Control Board, any provision of the County Erosion and Sedimentation Control Ordinance, any condition of a permit, or any provision of the Virginia Erosion and Sediment Control Law. The civil penalty for any one violation ranges from \$100 to \$1,000 and each day during which the violation exists is a separate offense with a maximum total penalty of \$10,000. The County would decide on a case by case basis whether to pursue a civil penalty or criminal sanctions.
- 6) Make editorial and minor revisions including changing “shall” to “will” or “must” or “may” throughout the sections of the ordinance being amended.

The proposed amendment is included as Attachment A to the Staff Report.

REGULATORY IMPACT:

The proposed amendment provides for the use of civil penalties in lieu of criminal sanctions as an option in addressing violations of the Erosion and Sedimentation Control Ordinance. The penalty for any one violation ranges from \$100 to \$1,000 and each day during which the violation exists is a separate offense. There is a maximum total penalty of \$10,000. The reorganization of the enforcement provisions in the ordinance to align them with our current process for issuing violations will provide clarity and promote efficiency in the enforcement of the ordinance.

FISCAL IMPACT:

Implementation of the proposed amendment will have no impact on the County budget. Any civil penalties assessed by the court will be paid to the Treasury of Fairfax County.

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ENCLOSED DOCUMENTS:

Attachment 1 – Staff Report is available online at:

<https://www.fairfaxcounty.gov/landdevelopment/sites/landdevelopment/files/assets/documents/pdf/pfm/staff-report-chpt-104.pdf>

Attachment 2 – Planning Commission Verbatim excerpt is available online at:

<https://www.fairfaxcounty.gov/planningcommission/sites/planningcommission/files/assets/documents/pdf/2020%20verbatim/verbatim10720codeamendmentchapter104erosionandsedimentationcontrol.pdf>

STAFF:

Rachel Flynn, Deputy County Executive

William D. Hicks, P.E., Director, Land Development Services

ASSIGNED COUNSEL:

Marc E. Gori, Assistant County Attorney

4:00 p.m.

CLOSED SESSION:

- (a) Discussion or consideration of personnel matters pursuant to Virginia Code § 2.2-3711(A) (1).
- (b) Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to Virginia Code § 2.2-3711(A) (3).
- (c) Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, and consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel pursuant to Virginia Code § 2.2-3711(A) (7).
 - 1. *Fairfax County Police Department and Colonel Edwin C. Roessler Jr., v. Harrison Neal, Record No. 191129; Harrison Neal v. Fairfax County Police Department and Colonel Edwin C. Roessler Jr., Record No. 191127 (Va. Sup. Ct.)*
 - 2. *Mateusz Fijalkowski v. M. Wheeler, S. Adcock, S. Blakely, R. Bronte-Tinkew, C. Clark, J. Grande, R. Jakowicz, L. Labarca, L. McNaught, W. Mulhern, M. Zesk, Sean Brooks, and American Pool, Inc., Appeal No. None Assigned (U.S. Sup. Ct.)*
 - 3. *Richard Miller v. Douglas A. Comfort, Amanda Skowronski, and Jason Friedman, Case No. 1:19-cv-1252 (E.D.Va.)*
 - 4. *Viola Laird v. County of Fairfax, Virginia, Appeal No. 18-2511 (U.S. Ct. of App. for the Fourth Cir.)*
 - 5. *Vienna Metro LLC, V Metro LLC, Metro W LLC, V Metro W LLC, and CRC Property Management LLC v. Fairfax County, Virginia and Board of Supervisors of Fairfax County, Virginia, Case No. CL-2020-0016206 (Fx. Co. Cir. Ct.) (Providence District)*
 - 6. *Daniella Bizzoco v. Fairfax County Department of Animal Sheltering, Case No. CL-2020-0016791 (Fx. Co. Cir. Ct.)*
 - 7. *John Michael Wolfe v. Patrick R. Wooley, et al.; Case No. 1:20CV116 (U.S. Dist. Ct. for E.D. Va.)*
 - 8. *April Michelle Marshall, a.k.a. April Norwood v. Alicia A. Adkins, #4259; Case No. CL-2019-0008593 (Fx. Co. Cir. Ct.)*

9. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Michael Meredith and Erika Meredith*, Case No. GV20-006957 (Fx. Co. Gen. Dist. Ct.) (Braddock District)
10. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Gregory S. Souders*, Case No. GV19-041522 (Fx. Co. Gen. Dist. Ct.) (Braddock District)
11. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Brookhaven LLC*, Case No. GV19-026167 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)
12. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Ester F. Lopes*, Case No. CL 2020-0008878 (Dranesville District)
13. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Mahshid Hassan Pourzai and Mina Dadkhah*, Case No. GV20-015965 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)
14. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Norman J. Fry and Laura A. Fry*, Case No. CL-2020-0011752 (Fx. Co. Cir. Ct.) (Hunter Mill District)
15. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Darioush David Movafagh and Lili Movafagh*, Case No. CL-2020-0008594 (Fx. Co. Cir. Ct.) (Hunter Mill District)
16. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Richard M. Cole*, Case No. GV20-014557-00 (Fx. Co. Gen. Dist. Ct.) (Hunter Mill District)
17. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Keun Hoon Lee and Yong Ja Lee*, Case No. CL-2019-0000700 (Fx. Co. Cir. Ct.) (Lee District)
18. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Marsha G. Savage*, Case No. CL-2010-0013693 (Fx. Co. Cir. Ct.) (Lee District)
19. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Sarra Semere and Helen Semere-Kifle*, Case No. CL-2020-0015796 (Fx. Co. Cir. Ct.) (Lee District)
20. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Colin Loughlin Wilkshire and Tien Tong Pongvichit*, Case No. CL-2020-0015649 (Fx. Co. Cir. Ct.) (Lee District)
21. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Md Bashed Molla and Lima Akter*, Case No. CL-2020-0011753 (Fx. Co. Cir. Ct.) (Mason District)

22. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County v. Abderrahmane Hidara, Lalla Kantour and Yamina Aanzaoui*, Case No. CL-2020-0014881 (Fx. Co. Cir. Ct.) (Mason District)
23. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Ha Thi Truoc*, Case No. CL-2020-0013745 (Fx. Co. Cir. Ct.) (Mason District)
24. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Nicole Yi and Michelle Min Hi Yi*, Case No. CL-2020-0015648 (Fx. Co. Cir. Ct.) (Mason District)
25. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Ivett Alejandra Leyva and Brian Holm-Hansen*, Case No. GV20-013325 (Fx. Co. Gen. Dist. Ct.) (Mason District)
26. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Wardeh S. Rabadi*, Case No. GV19-026166 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)
27. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Mac Arthur Weston*, Case Nos. GV20-015626 and GV20-015640 (Fx. Co. Gen. Dist. Ct.) (Springfield District)
28. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Samuel A. Velasquez*, Case No. CL-2019-0002543 (Fx. Co. Cir. Ct.) (Sully District)
29. *Board of Supervisors of Fairfax County v. Mason District Little League, Inc.*, Case No. GV20-015639 (Fx. Co. Gen. Dist. Ct.) (Mason District)
30. *Board of Supervisors of Fairfax County v. Capitol Steps Production, Inc.*, Case No. GV20-015763 (Fx. Co. Gen. Dist. Ct.) (Springfield District)